



# राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

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शिमला, शनिवार, 11 दिसम्बर, 1954

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भाग I—वैधानिक नियमों को छोड़ कर हिमाचल प्रदेश के उपराज्यपाल और जुडिशल कमिश्नरज कोर्ट द्वारा अधिसूचनाएं इत्यादि

**HIMACHAL PRADESH GOVERNMENT**  
**Establishment Branch**

**NOTIFICATION**

Simla-4, the 4th December, 1954

**No. A-8-32/53.**—Shri Mahesh Chandra, Judicial Secretary, Himachal Pradesh, is appointed as officiating Chief Secretary to Govt. Himachal Pradesh, and Financial Commissioner, in addition to his own duties with effect from the afternoon of 18th November, 1954, till further orders, vice Shri Mangat Rai, I. A. S., who reverted to his parent service, in

the Punjab. He will also function as Development Secretary-cum-Development Commissioner, Registrar, Co-operative Societies, Director of Industries, Civil Supplies and Panchayats Departments, and Administrative Secretary to Government for the Departments of Agriculture, Co-operative, Fisheries, Industries, Panchayats and Transport from the same date.

By order,  
**BASANT RAI,**  
Assistant Secretary (Revenue).

**Home, Gazette and Transport Department****NOTIFICATIONS**

Simla-4, the 3rd December, 1954

**No. HGT-96-26/49.**—With reference to the Himachal Pradesh Government Notification No. HGT-96-26/49, dated the 9th April, 1954, the Lieut.-Governor, Himachal Pradesh, is pleased to direct that the following addition may be made in the Second Schedule annexed to the above notification :-

District :- Registration Marks :-  
BILASPUR 1701 to 1800

Simla-4, the 3rd December, 1954

**No. HGT-96-26/49.**—The following draft of an amendment which the Himachal Pradesh Government propose to make in their notification No. HGT-96-26/49, dated the 29th September, 1954, is published for the information of all persons likely to be affected thereby, as required by sub-section (1) of section 133 of the Motor Vehicles Act, 1939. The draft will be taken into consideration on or after the 15th day of its publication together with any objections or suggestions which may be received with respect to it before that day :-

In line number 9 of the above notification between "20th January, 1949," and-

"shall also supply" insert the following :-  
"With all subsequent amendments."

Simla-4 the 6th December, 1954

**No. HGT-96-18/49-II.**—The Lieutenant-Governor, Himachal Pradesh, is pleased to sanction the appointment of Shri I. C. Mahajan with the concurrence of the Union Public Service Commission to the post of Works Manager, Himachal Government Transport, on Rs. 500 P. M. in the sanctioned scale of Rs. 500-30-800 with effect from the 17th November, 1954. He will be on probation for one year.

By order,

INDAR SEN,

Assistant Secretary (General)

Simla-4, the 4th December, 1954

**No. HGT-4-56/49.**—On return from 26 days earned leave, Shri Devki Nandan resumed charge of the post of Revenue Assistant and Magistrate 1st Class, Nahan, Sirmur District, on the fore-noon of the 30th September, 1954.

Simla-4, the 4th December, 1954

**No. HGT-4-56/49.**—Shri Devki Nandan, Magistrate 1st Class and Revenue Assistant, Nahan, Sirmur District, has been granted 26 days' earned leave with effect from the 4th September (F.N.) to the 29th September.

Simla-4, the 7th December, 1954

**No. HGT-4-41/49-III.**—In exercise of the

powers conferred by paras 21 and 22 of the Himachal Pradesh (Courts) Order, 1948, the Lieutenant Governor, Himachal Pradesh, after consultation with the Judicial Commissioner, Himachal Pradesh, is pleased to enhance powers of Subordinate Judge, vested in Shri Parkash Chand, Magistrate 1st Class, Sundernagar, District, Mandi from Rs. 1,000 to Rs. 2,000 from the date of issue of this Notification.

By order,

SHIV SINGH P. C. S.,  
Assistant Secretary (Home).

**Education Department****NOTIFICATION**

Simla-4, the 3rd December, 1954

**No. E-111-140/54.**—Shri Sham Lal Soni, District Inspector of Schools, Mahasu District in Himachal Pradesh (Gazetted Class II) took charge of his office as Principal, Government Basic College, Ahar, Bilaspur, on the forenoon of 1st November 1954 on his transfer to that College.

SHIV SINGH, P. C. S.,  
Secretary.

**Forest Department****NOTIFICATIONS**

Simla-4, the 3rd December, 1954

**No. Ft.-45-61/54.**—The Lieutenant Governor, Himachal Pradesh, has been pleased to make the following promotions and postings in the Himachal Pradesh Forest Department :-

Name and Rank	Promoted as and posted as	With effect from
1	2	3
Shri H. P. Sharma, Forest Ranger.	After passing the Superi- or Forest Service Course, 1952-54, Dehra Dun, promoted to Himachal Pradesh Forest Service Class II (250-25-550/25-750) in an officiating capacity against a temporary post and attached to Upper Bishahr Forest Division Rampur.	8th April, 1954 (forenoon)
Shri Tek Singh Patyal, Forest Ranger.	After passing the Superi- or Forest Service Course 1952-54, Dehra Dun promoted to Himachal Pradesh Forest Service Class II (250-25-550/25-750) in an officiating capacity against a tem-	

1	2	3
		porary post and attached to Chamba Forest Division, Chamba, for the revision of Dalhousie Working Plan.

Simla-4, the 7th December, 1954

**No. FT. 43-203/49.**—Corrigendum to H. P. Govt. Notification No. Ft. 43-203/49, dated the 3rd July, 1954.

Read "17-5-1951" for "31-3-1951" appearing in the above notification.

SHIV SINGH,  
Assistant Secretary (Forests)

### Vidhan Sabha

#### NOTIFICATIONS

Simla-4, the 6th December, 1954

**No. L. A-109-31/54.**—It is hereby notified for general information that with immediate effect the Himachal Pradesh Legislative Assembly will be known as Himachal Pradesh Vidhan Sabha and its Secretariat as Himachal Pradesh Vidhan Sabha Secretariat.

Simla-4, the 7th December, 1954

**No. L.A 109 28/54.**—It is hereby notified for general information that the Session of the Himachal Pradesh Vidhan Sabha which commenced from the 25th November, 1954 was adjourned *sine die* on the 7th December, 1954.

Simla-4, the 7th December, 1954

**No. L.A-109-148/54.**—Under Rule 151 of the Rules of Procedure of the Himachal Pradesh Vidhan Sabha, the following members of the Himachal Pradesh Vidhan Sabha have been declared elected as members of the Standing Committees for the Departments given below for the year 1954-55.

**1. Standing Committee.**—For the Departments of Finance, General Administration, Revenue and Excise, Forest, Agriculture & Animal Husbandry, Legislative Assembly, Law & Justice and Public Information.

1. Shri Rattan Singh
2. „ Avtar Chand Mehta
3. „ Ram Dass
4. „ Ghanshyam
5. „ Krishna Nand Swami

In addition to the above 5 members the Government Chief Whip will be the ex-officio member and the Minister Incharge of the Departments will be the Chairman of the Committee.

**2. Standing Committee.**—For the Departments of Homes Police & Jails, Planning & Development, Co-operative, Panchayats, Industries, Education and Civil Supplies.

1. Shri Chattar Singh
2. „ Ram Dayal

3. Shri Kashmir Singh
4. „ Tapinder Singh
5. „ Baldev Chand

In addition to the above 5 members the Government Chief Whip will be the ex-officio member and the Minister Incharge of the Departments will be the Chairman of the Committee.

**3. Standing Committee.**—For the Departments of P.W.D., Medical and Public Health, Local Self Government and Transport.

1. Shri Bala Nand Chauhan
2. „ Vidya Dhar
3. „ Karam Singh
4. „ Partap Singh
5. „ Jiwnu Ram

In addition to the above 5 members the Government Chief Whip will be the ex-officio member and the Minister Incharge of the Departments will be the Chairman of the Committee.

CHET RAM,  
Secretary.

### स्वायत्त शासन विभाग

#### शुद्धि पत्र

शिमला-4, 3 दिसम्बर, 1954

संख्या ऐल० आर-62-14/54.—हिमाचल प्रदेश राज्य की अधिसूचना संख्या ऐल आर 62-14/54, दिनांक 13 नवम्बर, स 1954 में पंजाब स्माल टाऊन एक्ट 1821 के स्थान पर पंजाब स्माल टाऊन एक्ट 1921 पढ़ा जाय।

#### अधिसूचना

शिमला-4, 3 दिसम्बर, 1954

संख्या ऐल० आर-17-31/54.—हिमाचल प्रदेश शासन की अधिसूचना संख्या ऐल० आर-17-31/54, दिनांक 18 मई 1954 के क्रम में तथा हिमाचल प्रदेश में प्रयुक्त हुए पंजाब स्माल टाऊन एक्ट, 1921 की धारा 4, 2 और उक्त शासन की अधिसूचना संख्या ऐल० आर-62-10/54, दिनांक 10 मार्च, 1954 में प्रकाशित इलैक्शन रूल्ज के नियम (rule) 3 द्वारा प्रदत्त शक्तियों के प्रयोग में उपराज्यपाल हिमाचल प्रदेश सहर्ष आदेश देते हैं कि सुन्दर नगर की स्माल टाऊन कमेटी के सदस्यों के चुनाव के लिए सुन्दर नगर स्माल टाऊन 6 वार्डों में बांटा जायगा और वार्ड नं 4 से एक अनुसूचित जाति का सदस्य भी चुना जाएगा।

#### SCHEDULE OF WARDS

S. No.	Name of wards.	Description of boundaries of wards
1	Sunder Nagar Pungh, and Bhojpur	Tamroh, Thathur, Salah, Dhadhiyal, Banaik.

1	2	3
2	Sunder Nagar	Rasmam, Parli Baned, Bachhna and Chatrokher.
3	Sunder Nagar	Muhal Sunder Nagar excluding villages Pungh Tamroh, Thather, Parli Bana, Bachhna and Chatrokher.
4	Bhojpur (Doubtful member)	Muhal, Bhojpur and Mahal Ropa excluding village Banaik.
5	Purana Nagar	Purana Nagar Upper and Lower Bazar and Khariri.
6	Purana Nagar	Purana Nagar Muhal excluding Upper and Lower bazars and Khariri.

आज्ञा से,  
प्रेम राज,  
सहायक सचिव।

### Medical Directorate

#### NOTIFICATION

Simla-4, the 8th December, 1954

**No. M-65-167/53.**—Dr. K. N. Udupa, M. S. (Mich), F.R.C.S. (Canada), Civil Surgeon, Mandi District, Mandi, is granted the following leave with effect from the 22nd September, 1954 :—

- (i) Earned leave for 100 days from 22nd September, 1954 to 30th December, 1954;
- (ii) 100 days half average pay leave from 31st December, 1954 to 9th April, 1955;
- (iii) 165 days Extraordinary Leave from 10th April, 54 to 21st September, 1955.

By order,  
M. CHANDRA,  
Secretary.

### Panchayat Department

#### NOTIFICATION

Simla-4, the 3rd December, 1954

**No. CS.-70-9/54.**—Corrigendum to Notification No. CS.-70-9/54, dated Simla-4, the 7th September, 1954 published in Rajpatra Himachal Pradesh on 11th September, 1954 at page 564.

Read 2,766 as population against Sach and 2,721 against Lauhal under column No. 3 of the schedule.

By order,  
MANGAT RAI,  
Secretary.

### Public Relations Department

#### NOTIFICATION

Simla-4, the 2nd December, 1954

**No. G-78-176/54.**—Shri Hari Krishan Mittoo has been appointed as an Editor in Public Relations Department, Himachal Pradesh, in the scale of 250-15-340/20-400, with effect from the 27th September, 1954, forenoon.

PREM RAJ,  
Assistant Secretary. (Political)

### Revenue Department

#### NOTIFICATION

Simla 4, the 3rd December, 1954

**No. R-88-21/54.**—With reference to Himachal Pradesh Government Notification No. R. 88-21/54, dated the 28th September, 1954, and in exercise of the powers conferred by section 42 of the Himachal Pradesh Consolidation of Holdings Act, 1953 (X of 1954), the Lieutenant Governor, Himachal Pradesh, is pleased to make the following rules under the said Act:

#### R U L E S

1. **Short title.**—These rules may be called the Himachal Pradesh Consolidation of Holdings Rules, 1954.
2. **Extent and Commencement.**—They shall come into force in the areas in which, and from the date on which, the Himachal Pradesh Consolidation of Holdings Act, 1953, other than Section 1, is made applicable.
3. **Definitions.**—In these rules unless there is anything repugnant in the subject or context:—
  - (a) "Act" means the Himachal Pradesh Consolidation of Holdings Act, 1953 (H. P. Act No. X of 1954)
  - (b) "Committee" means a village committee specially appointed by the Consolidation Officer in respect of any estate or group of estates for consolidation of holdings; and
  - (c) "Section" means a Section of the said Act.
4. **Modes of publication.**—Any matter required to be published, or of which public notice is to be given, under the Act, shall be published by exhibiting copies thereof in the estate or estates concerned in Hindi or in English as may be deemed proper and shall also, so far as possible, be announced in such estate or estates by beat of drum.
5. **Matters pertaining to cancellation of declaration made under section 3.**—Without prejudice to the generality of the power of the State Government to cancel the declaration mentioned in section 3, it may cancel the same on one or more of the following grounds, namely, that—
  - (a) the area is under a development scheme of such a nature which, when completed, would render the consolidation inequitable to a section of the peasantry;
  - (b) the area has suffered from some calamity from which it will take some time to recover;
  - (c) the village is so much torn up by factions as to make any consolidation work very difficult;

(d) cultivation in any village is scattered coupled with interspersal of uncultivated patches and consolidation of holdings is likely to serve no useful purpose ; and

(e) the tract is liable to very quick and violent changes due to fluvial action of any river or due to quick erosion of soil.

**6. Consequences of cancellation of declaration made under section 3.**—On cancellation of the notification under section 3, the following consequences shall ensue as from the date of cancellation, namely:

(a) the areas shall become subject to the normal revenue administration of the district ;

(b) matters which may have been referred to arbitration under sub-section (4) and section 10 shall be transferred to the court of competent jurisdiction, who shall dispose them of in accordance with the normal law and procedure.

**7. Procedure and proceedings relating to the examination of revenue records**—(1) The Assistant Consolidation Officer or the Consolidation Officer shall in taking action under section 6, direct the Inspector (Kanungo) to make a field partial of the village and submit a report to him showing—

(a) the total number of plots in the village ;

(b) the number of plots which have changed their shapes by division and accretion ;

(c) the number of fields and their area created as a result of extension of cultivation ;

(d) the number of fields and their area which have remained out of cultivation for more than four years and the reasons therefor ;

(e) a list of mistakes detected by him in—

(i) the map ;

(ii) the khasra in respect of area and possession ; and

(iii) the last jamabandi as a result of checking and test thereof in accordance with the provisions of the Himachal Pradesh Land Records Manual ;

(f) the number and particulars of scattered trees and wells standing in the different plots.

(2) On receipt of the reports of the Inspector (Kanungo) mentioned in sub-rule (1), the Assistant Consolidation Officer or the Consolidation Officer shall check it by making a field to field partial. He shall try to effect during the course of his checking, as may reconciliations between tenure-holders (which shall be reduced to writing) as possible, and shall then prepare a report on his findings.

(3) The report submitted by the Inspector (Kanungo) as amended by the Assistant Consolidation Officer or the Consolidation Officer shall be forwarded to the State Government accompanied with the opinion of the Assistant Consolidation Officer, giving reasons therefor as to whether revision of maps and records is necessary in that village, and a statement showing the number of errors in maps, Khasras and Jamabandies he has been able to correct by mutual agreements.

(4) On receipt of the report under sub-rule (3), the State Government shall publish a notification regarding revision of records and thereupon a revised map and a field book and the records-of-rights shall be prepared for the village or villages concerned in accordance with the provision of the Punjab Land Revenue Act, 1887 as applied to the Himachal Pradesh and rules framed thereunder, as if a notification had been issued in respect thereof under the said Act and rules.

(5) Where the Assistant Consolidation Officer or the Consolidation Officer is of the opinion that a revision of maps and records is not necessary, and only corrections are required to be made in revenue records, he shall proceed to correct the entries in the revenue records in accordance with the provisions of the Punjab Land Revenue Act, 1887 as applied to Himachal Pradesh and the rules framed thereunder.

**8. Determination of revenue or rent of the plot under section 9(1) (a) (v).**—The rent or revenue of a plot if it is a part of a large holding, mentioned in section 9(1) (a) (v) shall be calculated in accordance with the following formula :—

$$R = \frac{R_1 \times R_2}{R_3}$$

R is the rent or revenue of the plot as the case may be ;

R<sub>1</sub> is the rental value of the plot ;

R<sub>2</sub> is the rent or revenue of the holding to which the plot belongs ; and

R<sub>3</sub> is the rental value of holding. If the plot constitutes a separate holding, assessed to rent or revenue payable in cash the said rent or revenue, as the case may be, shall be entered in the statement.

**9. List of tenure-holders under section 9 (1) (b).**—The list of tenure-holders mentioned in section 9 (1) (b) shall contain the following additional particulars:—

(1) the number of masonry wells belonging to tenure-holders and an estimated value of each ;

(2) the number of trees and their estimated value, standing on the holding of the tenure-holder ;

(c) the proportionate value of trees standing on the boundaries of the holdings.

**10. Disposal of objections under sub-section (2) of Section 10.**—The Consolidation Officer on receipt of report from the Assistant Consolidation Officer on the objections under section 10 (2) may, except as provided in sub-section (4) of section 10, reject or accept the objection and order corrections and additions to be made in the statement

Provided, however, that before giving his decision, the Consolidation Officer shall consult the Committee in regard to the objections and the recommendations of the Assistant Consolidation Officer.

**11. Preparation of scheme of consolidation.**—The Consolidation Officer shall, after publication of declaration under sub-section (1) of section 3, publication of statement under sub-section (2) of section 9 and decision of objections, if any, under section 10, visit each of the estates concerned after giving reasonable notice of his forthcoming visit to the landowners and tenants thereof and shall appoint a village committee consisting of not less than 5 and not more than 15 members from among the landowners and tenants of the estate or estates concerned who must be—

(1) permanent residents of the village ; and

(2) 21 years or more in age and preferably literate.

The Village Nambardar shall necessarily be one of the members of that Committee. He shall then record the statements of the landowners and tenants of the estate or estates concerned and shall put up a



scheme for the consolidation of holdings in consultation with the village committee mentioned above.

**12. Particulars of the scheme.**—Every such scheme of consolidation shall contain the following particulars:—

- (i) a statement of classification of land for the purpose of consolidation and the exchange ratio for conversion of one class into another;
- (ii) a statement of valuation of lands, trees, etc. to be exchanged showing the compensation to be given to or received by the holders concerned;
- (iii) a brief statement as to the action, if any, taken in pursuance of sections 13 and 14 of the Act; and
- (iv) such other particulars as may be considered expedient by the Settlement Officer (Consolidation) in this behalf.

(2) The scheme of Consolidation in respect of the area for which a notification has been issued under section 3 shall include the holdings of all tenants whether they be occupancy or non-occupancy tenants.

**13. Draft scheme of consolidation to be explained to the persons affected thereby.**—The draft scheme of consolidation shall be read over and explained by the Consolidation Officer to the persons likely to be affected thereby specially collected for the purpose. If any right-holder desires to have a copy of the proposed scheme of consolidation, it shall be supplied to him or her, as the case may be, on payment of the prescribed fee.

**14. Reservation of land for common purposes.**—In the matter of assigning land for any common purpose, the Consolidation Officer shall be guided by the requirements of the land holders. The criterion shall be that the residents are provided with a reasonable area for their common purposes and healthy recreation, i.e. the village roads, drains are so provided as to secure good sanitation and in such matters the Consolidation Officer shall take the persons affected into confidence and as far as possible this part of the scheme shall be based on unanimous opinion of the members of the Committee.

**15. Re-partition.**—The Consolidation Officer shall after obtaining the advice of the Committee, carry out re-partition in accordance with the scheme of consolidation of the holdings confirmed under section 20 and shall prepare the following re-partition papers:—

- (i) a map of the village showing all the existing field numbers, recognised roads and irrigation channels and areas assigned for public purposes, such as burial grounds, places for disposal of animal carcasses, ponds or grazing areas, etc., with new field numbers superimposed upon it in red lines or other markings;
- (ii) another similar village map exhibiting the position emerging as a result of re-partition;
- (iii) a statement showing the names of the owners of holdings with particulars of field numbers, shares class of land, tenure, area, assessment and encumbrances, if any, after getting the record-of-rights up-to-date;
- (iv) a statement showing the names of owners of holdings with particulars of all different rights possessed by each individual;
- (v) a statement showing the compensation payable by or to an owner in order to adjust differences in the value of land exchanged under section 23 of the Act or due to the existence of wells, trees etc. under sub-section (4) of section 13;

(vi) a statement showing the names of occupants or holders to whom the new consolidated holdings are allotted with particulars of field numbers, shared, class of land, tenure, area, assessment and encumbrances, if any; and

(vii) such other papers as may be considered expedient by the Settlement Officer (Consolidation) in this behalf.

**16. Matters to be kept in view in preparing re-partition papers.**—The following shall also be kept in view in preparing the re-partition papers mentioned in the preceding rule:—

(i) In allotting land to a tenure holder, consideration shall be made of—

- (a) the improvement affected by him in his holding;
- (b) the situation of any grove held by him; and
- (c) the situation of the land held by him as sub-tenant of any other tenure-holder;

(ii) Where a tenure-holder has to be allotted land in more than one block, he shall, except for special reasons, be allotted land on the boundary of the two blocks so as to form a single chak;

(iii) Where a tenure holder holds land in more than one village, he shall, so far as it is possible, be allotted land on the boundary of the villages so as to form a single chak.

**17. Re-partition papers to be explained to the persons affected thereby.**—The contents of the statement mentioned in items (iv) to (vii) of rule 15 shall be read over and explained by the Consolidation Officer to the persons likely to be affected thereby specially collected for the purpose.

**18. Procedure for eviction and entering into possession.**—The Consolidation Officer shall serve a notice on the person or persons liable to eviction under sub-section (2) of section 19 requiring him within 15 days of the receipt of the notice to vacate the land. If such notice is not complied with within the time specified therein, the Consolidation Officer may exercise the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 as applied to Himachal Pradesh, for the purpose of putting in physical possession of the holding the person entitled thereto.

**19. Deposit of Compensation.**—The amount of compensation payable by an owner under section 19, shall be deposited by him in the nearest Government treasury and a copy of the receipt obtained by him in token of credit shall be produced by him before the Consolidation Officer.

**20. Re-distribution of assessment.**—After re-partition has been confirmed and appeal against it, if any, has been finally decided, the Collector of the district shall take necessary steps for the re-distribution of assessment of the estate concerned in accordance with sub-section (3) of section 56 of the Punjab Land Revenue Act, 1887 as applied to Himachal Pradesh.

**21. Transfer of encumbrance.**—In transferring a lease, mortgage, debt, or other encumbrance under sub-section (2) of section 22, the Consolidation officer shall—

- (i) if the new holding is of the same market value as the original one, transfer to the former the entire encumbrance attaching to the latter; and

(ii) if the new holding is of a substantially greater market value than the original one, transfer to the former holding the encumbrance attaching to the latter subject in the case of a lease, to the condition that the lessee shall pay to the owner such reasonable rent in addition to the rent already payable under the lease as may be fixed by the Consolidation Officer and in the case of any other encumbrance, subject to such reasonable reduction in the area or in the rate of interest as may be fixed by the Consolidation Officer, having regard to the substantially better security provided by the owner of the new holding.

**22. Putting the encumbrancer in possession.**—If the lessee, mortgagee or other encumbrancer appears to the Consolidation Officer to be entitled to possession of holding under section 22, the Consolidation Officer shall issue a notice to the owner to show cause within fifteen days of the receipt of the notice why the lessee, mortgagee or other encumbrancer as the case may be, should not be put in possession of such holding. If the owner fails to show cause, or if the Consolidation Officer is satisfied that the cause shown by the owner is not adequate, he shall put the lessee, mortgagee or other encumbrancer, as the case may be, into possession of the holding and the record-of-rights in respect of the holding shall be corrected accordingly.

**23. Cost of Consolidation.**—The cost of consolidation proceedings shall be assessed by the Assistant Consolidation Officer either:

- (i) by levying on the area consolidated such acreage rate as shall be determined by the State Government from time to time, which may vary with the nature of the land; or
- (ii) by distributing it proportionately on each holding affected by the scheme on the basis of land revenue assessed, or where the assessment is fluctuating, on the average revenue assessed during the last three years on such holdings.

**24. Appointment of and procedure for reference to the Arbitrator.**—(i) An Arbitrator for any local area or district as a whole, shall be appointed by the State Government on a reference made by the Director, Consolidation of Holdings. For this purpose, the Director, Consolidation of Holdings shall invariably give a panel of 3 names with merits of each candidate for consideration of the State Government.

(2) All cases meant for arbitration shall be referred to the Arbitrator through the Director, Consolidation of Holdings.

(3) The time limit for reference of a dispute to an Arbitrator shall be two months from the date of the last order passed in the case by a competent authority.

**25. Appointment of guardians to minors.**—Where any of the land-holders is a minor, the Consolidation Officer may, after such enquiries as may be necessary, and by an order in writing, appoint a suitable person, whose interest is not adverse to that of the minor, as guardian *ad litem*.

Simla-4, the 8th December, 1954

**No. R-60-83/54.**—WHEREAS it appears to the Lieutenant Governor, Himachal Pradesh, that the land is required to be taken by the Government at public expense for a public purpose, namely for a pond in village Berthin, it is hereby declared that the land described in the specification below is required for the above purpose.

2. This declaration is made under the provisions of Section 6 of the Land Acquisition Act, 1894, to all whom it may concern, and under the provisions of Section 7 of the said Act, the Collector Bilaspur, is hereby directed to take order for the acquisition of the said land.

3. A plan of the land may be inspected in the Office of the Collector, Bilaspur (Simla Hills).

### Specification

District: Bilaspur		Tehsil: Ghumarwin	
Village	Khasra No.	Area	
		Big.	Bis.
Berthin, Pargana	206	0	4
Sunhani			

By order.

BASANT RAI,

Assistant Secretary.

**भाग 2—वैधानिक नियमों को छोड़ कर विभिन्न विभागों के अध्यक्षों और जिला मैजिस्ट्रेटों द्वारा अधिसूचनाएं इत्यादि**

### Agriculture Department

#### CORRIGENDUM

Simla-4 the 30th November, 1954

**No. Agr-5-213/52.**—In the 2nd line of this Department Notification of even number, dated the 30th September, 1954, read, "Clause 6 (C)" instead of "Clause IV" of the Himachal Pradesh Seed Potato Control Order of 1954.

By order,

SUKH RAJ,

for Director of Agriculture.

Simla-4, the 6th December, 1954

**No. Agr-5-205/49.**—Shri V. P. Sobti, assumed the charge of the office of the Regional Potato Development Officer, Himachal Pradesh,

from the forenoon of 12th May, 1954.

PUSHKAR NATH,

Director of Agriculture.

### Office of the Collector, Mahasu District

#### CORRIGENDUM

Kasumpti, the 4th December, 1954

**No. 22-M3 (2)/53-II.**—In Notification No. 22-M3(2)/53, dated the 14th October, 1954, publishing the result of election of members to the Gram Panchayats in Solan Tehsil, Shri Nanku R/O Badhalog is hereby substituted for Shri Gorkhu Ram R/O Kahal Mahtan shown erroneously against No. 8 under scheduled caste male

reserved of Badhalog Gram Sabha appearing in  
Serial No. 10 Badhalog thereof.

RAGHUBIR SINGH,  
Collector.

3—अधिनियम, विधेयक, और विधेयकों पर प्रवर समिति के प्रतिवेदन, वैधानिक नियम तथा हिमाचल प्रदेश के उपराज्यपाल, जुडिशल कमिशनरज कोर्ट, फाइनैन्शल कमिशनर, कमिशनर आफ इन्कम टैक्स द्वारा अधिसूचित आदेश इत्यादि ।

### विधान सभा विभाग

अधिसूचना

शिमला-4, 7 दिसम्बर, 1954

नं० एल. ए. 109-152/54.—हिमाचल प्रदेश विधान सभा के प्रक्रिया नियमों के नियम 98 के अधीन हिमाचल प्रदेश बड़ी जमीन्दारी उन्मूलन तथा भूमि व्यवस्था (संशोधन) विधेयक, 1954, जैसा कि यह 6 दिसम्बर 1954 को हिमाचल प्रदेश विधान सभा में पुरः स्थापित हुआ, सार्वजनिक सूचनायें प्रकाशित किया जाता है ।

## हिमाचल प्रदेश बड़ी जमीन्दारी उन्मूलन तथा भूमि व्यवस्था (संशोधन) विधेयक, 1954

(जैसा कि विधान सभा में पुरः स्थापित हुआ)

हिमाचल प्रदेश बड़ी जमीन्दारी उन्मूलन तथा भूमि व्यवस्था अधिनियम, 1953 में  
संशोधन करने का

### विधेयक

यह निम्नलिखित रूप में अधिनियमित किया जाता है :

1. संक्षिप्त नाम.—(1) इस अधिनियम का नाम हिमाचल प्रदेश बड़ी जमीन्दारी उन्मूलन तथा भूमि व्यवस्था (संशोधन) अधिनियम, 1954 होगा ।

2. धारा 54 में संशोधन.—हिमाचल प्रदेश बड़ी जमीन्दारी उन्मूलन तथा भूमि व्यवस्था अधिनियम, 1953 की धारा 54 में उपधारा (2) के पश्चात् निम्नलिखित उपधारा (3) जोड़ी जाए—

“(3) उपधारा (2) के अधीन वस्तुरूप में लगान इकट्ठा करने पर, अभिकर्ता (agent) भूमिपति को विनिहित रीति से एक नोटिस दे सकेगा और यदि भूमिपति नोटिस के दिनांक से तीस दिन के भीतर उक्त लगान इकट्ठा नहीं करता है तो माल अधिकारी विनिहित रीति से नीलामी द्वारा उक्त लगान की व्यवस्थापना करेगा या व्यवस्थापना करवाएगा और बिक्री से आय राजकोष में भूराजस्व निक्षेप (revenue deposits) के रूप में जमा कर देगा ।”

### उद्देश्यों तथा कारणों का विवरण

यह प्रतीत किया गया है कि हिमाचल प्रदेश बड़ी जमीन्दारी उन्मूलन तथा भूमिव्यवस्था अधिनियम, 1953 के अधीन नियुक्त अभिकर्ताओं (agents) को यह मालूम नहीं होगा कि जो लगान उन्होंने वस्तुरूप में इकट्ठा किया है और भूमिपति उसे उनसे थोड़ी सी अवधि में इकट्ठा नहीं करता या उसे इकट्ठा करने से इन्कार कर देता है तो उस दशा में उन्हें क्या करना चाहिये । परियाम स्वरूप उक्त धारा में उपबन्ध जोड़ा जा रहा है, जिसमें उक्त रूप से नियुक्त अभिकर्ताओं (agents) की स्थिति स्पष्ट कर दी गई है ताकि वे भूमिपति को सूचना देने के पश्चात् उपज को ब्रेच सकें ।

यशवन्त सिंह,

परमार ।

CHET RAM,  
Secretary.

भाग 4—स्थानीय स्वायत्त शासन : म्युनिसिपल बोर्ड, डिस्ट्रिक्ट बोर्ड, नोटीफाइड और टाउन एरिया तथा पंचायत विभाग  
शून्य

भाग 5—वैयक्तिक अधिसूचनाएं और विज्ञापन  
शून्य

भाग 6—भारतीय राजपत्र इत्यादि में से पुनः प्रकाशन  
शून्य



**भाग 7—भारतीय निर्वाचन-आयोग (Election Commission of India) की वैधानिक अधिसूचनाएं तथा अन्य निर्वाचन सम्बन्धी अधिसूचनाएं ।**

**Office of the Chief Electoral Officer**

**NOTIFICATION**

Simla-4, the 30th November, 1954

**No. EL-17-28/53.**—The Election Commission India's Notification No. 82/22/53/17474, dated 21st. October 1954, is reproduced below for information.

**INDAR SEN,**

Chief Electoral Officer.

**Election Commission, India**

**NOTIFICATION**

New Delhi, the 21st October, 1954

**No. 82/22/53/17474.**—WHEREAS the election of Shri Hira Singh as a member of the Legislative Assembly of the State of Himachal Pradesh, from the Solan Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of People Act, 1951 (XLIII of 1951), by Shri Hari Dass, son of Shri Guasaon Ram, resident of village Hatkot, Illaqa Kunihar, P. O. Kunihar, Tehsil Arki, District Mahasu, Himachal Pradesh;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission ;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

**BEFORE THE ELECTION TRIBUNAL,  
HIMACHAL PRADESH AT SIMLA**

**ELECTION PETITION No. 22 OF 1953**

**HARI DASS son of Shri Guasaon  
Ram, village Hatkot, Kunihar... PETITIONER.**

*versus*

1. **HIRA SINGH PAL** son of Parshotam Ram, village Domehar, Arki.
2. **RAM DASS** son of Sri Jairam Dass *alias* Jagan Dass, village Harth, Salogra, Solan.
3. **RUP RAM** son of Sri Barru Ram, village Hatkot, Kunihar ... .. **RESPONDENTS.**

**SARVASRI K. C. PANDIT and M. L. AUKTA**  
*Advocate for the petitioner.*

**SRI TEK CHAND CHITKARA**  
*for respondent No. 1*

**JUDGMENT**

(PER SHRI DAULAT RAM PREM, SENIOR  
ADVOCATE MEMBER)

This is an election petition by Sri Hari Das, son of Guasaon Ram of village Hatkot, challenging the election of Sri Hira Singh Pal, who was returned as successful candidate from the double member constituency of Solan. The election of Sri Hira Singh, respondent No. 1 and of Sri Ram Dass, respondent No. 2, was set aside by Himachal Pradesh Tribunal on 7th March, 1953 and the order of the Tribunal was published in the Gazette of India dated 17th April 1953. For the purpose of filling the vacancy so caused, bye-election was held in the Solan constituency to elect two persons, one of whom was to belong to the scheduled caste. On poll being taken on 19th July, 1953, Sri Hira Singh Pal, respondent No. 1, was declared elected from the general seat and Sri Ram Dass, respondent No. 2, from the scheduled caste. The result of the bye election was published in the official gazette dated 30th July, 1953. Petitioner was a candidate of the Congress Party, while respondent No. 1 was the Socialist candidate.

On 30th September, 1953, Sri Hari Das, petitioner, filed the present election petition before the Election Commission and this has been referred to the Election Tribunal, Himachal Pradesh, for disposal according to law.

The material averments in the petition, briefly stated, are:—that the election of respondent No. 1, Sri Hira Singh Pal, is void inasmuch as he himself, or through his agents, or through other persons acting with connivance of respondent No. 1, had been guilty of commission of illegal and corrupt practices specified in paragraphs 5, 6, 7 and 8 of the petition. The petitioner avers that respondent No. 1 published a false statement in relation to the personal character or conduct of the petitioner as mentioned in list 'A'; that the respondent No. 1 procured or obtained assistance of Hari Ram, Lambardar, Dila Ram Patwari, Nanak Chand, Lambardar and Dev Datt Vaid, who were serving under the Himachal Pradesh Government; that Sri Hira Singh Pal, respondent No. 1, issued posters, bills and chits, which did not bear the name and address of the printer and publisher, and that the respondent No. 1 did not keep regular books of account and his return of election expenses was false in material particulars.

In his written-statement, Sri Hira Singh Pal, respondent No. 1, denied the allegations *in toto*. Similarly, Ram Das, respondent No. 2, filed a written-statement on 28-12-1953, wherein he stated that, as the petitioner had not challenged his election, the petition was *mala fide*, ill founded and was liable to be dismissed with costs. It is clear from the perusal of the petition that the petitioner has not challenged the election of respondent No. 2, Sri Ram Das.

In this case the only contesting respondent is Sri Hira Singh Pal, respondent No. 1. Respondent No. 3 did not file any written-statement, nor appeared in Court. Sri Ram Das, respondent No. 2, appeared 2 or 3 times only and hence proceedings were ordered *ex parte* against respondents 2 and 3.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the respondent No. 1 (Hira Singh), his agents or other persons with his or his agents' connivance published statements of facts as set forth in paras 1 and 2 of list 'A', which were false in relation to the personal character or conduct of the petitioner and whether such statements were reasonably calculated to prejudice the prospects of the petitioner's election? Onus on petitioner.
- (2) Whether respondent No. 1 (Hira Singh), his agents or other persons with his or his agents' connivance obtained and procured for the furtherance of the prospects of his election the assistance of persons serving under the Himachal Pradesh Government as set forth in list 'B'? O. P.
- (3) Whether respondent No. 1 (Hira Singh) published and circulated hand-bills and printed chits among the voters not bearing on their face the name and address of the Press where they were printed or published as mentioned in list 'C'? O. P.
- (4) Whether respondent No. 1 (Hira Singh) failed to keep separate and regular books of account and whether he failed to enter the particulars of the expenditure in connection with his election in the prescribed manner? If so, what is the result? O. P.
- (5) Whether the return of election expenses lodged by respondent No. 1 (Hira Singh) on 9-9-1953 was false in material particulars as stated in list 'D'? Did he make a false declaration verifying such a return? If so, what is the result? O. P.
- (6) Whether the respondent No. 1 (Hira Singh), his agents or other persons with

his or his agents' connivance canvassed for votes on his behalf as alleged in para 6 (a) of the petition? O. P.

- (7) Whether respondent No. 2 (Ram Das) failed to keep and maintain regular books of account and to enter the particulars of expenditure in the prescribed manner? Whether he filed a return of election expenditure which was false in material particulars and whether the declaration verifying the return was false? If so, what is the result? O. P.
- (8) To what relief, if any, is the petitioner entitled?

The burden of proof of all issues was placed on the petitioner.

#### PRELIMINARY OBJECTION

Respondent No. 1 raised a preliminary objection in the written-statement that the lists of particulars marked as annexures 'A', 'B', and 'C' did not specify the necessary particulars of the alleged, corrupt and illegal practices, as required under section 83 (2) of the Representation of People Act, 1951, and that the general allegations contained in these lists being too vague and indefinite, did not admit of specific reply. Hence, he prayed that the petition should be dismissed on this ground alone. After hearing the parties on 2nd March, 1954, the Tribunal opined that although certain details were lacking, the petition could not be dismissed on that score alone. It directed the petitioner to furnish better particulars on the points referred to in the written statement. In compliance with this order, the petitioner submitted the statement of better particulars on 12th March 1954. The respondent No. 1 raised an objection to the effect that such statement of better particulars could not be considered as it was not verified. On 21st May, 1954, petitioner filed an application invoking inherent powers of the Tribunal to allow the verification of the statement of better particulars. On payment of costs to the respondent No. 1, verification was allowed by the Tribunal. Respondent No. 1 again filed objections to the statement of better particulars contending, *inter alia*, that fresh instances of corrupt practices had been introduced and the amendment was not warranted by law, as contained in the Representation of People Act. Detailed objections were taken with regard to each list. These will be disposed of later on, when I decide each issue.

#### DEFECTIVE DRAFTING OF ELECTION PETITIONS

Law reports on election cases, both in India and England, are replete with cases, where election petitions have failed on account of

their defective drafting. It is sad commentary on the legal profession that a large number of election petitions should be dismissed, or some paragraphs of the petition be struck off for haphazard drafting. Election law is a special law and a lawyer has to bring his forensic skill and specialized knowledge to bear upon the subject. If he fails in this sacred duty cast upon him by high tradition of his noble profession, the case of his client suffers and there is consequent miscarriage of justice, because the facts constituting corrupt practices cannot be investigated by election tribunals. Trial of an election petition is not a contest between two contending parties but is a public inquiry into the corrupt or illegal practices by a candidate. The inquiry is held on high public policy. The over-riding consideration is to vouchsafe the free nature and purity of elections. This is also the controlling purpose of the Representation of People Act. It is the duty of the lawyer to be thoroughly conversant with the election law, and avoid drafting the petition in careless and casual manner. It is perfectly true that some defects cannot entirely be eliminated even by the most skilful, but, on the other hand, much the larger number of them arise from perfectly avoidable slipshodness and want of precision in thought, legal knowledge and expression. Hence, scrupulous and meticulous care is needed in drafting election petitions.

#### PARTICULARS

Section 83 (2) of the Representation of People Act, 1951, lays down in clear and unequivocal terms that, "The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice."

Often, scant regard is paid to the specific provisions, quoted above, with the result that a number of petitions have been dismissed, or paragraphs of petition have been struck off, for non-compliance with the provisions of this enactment. As observed by Nanak Chand in his Law of Elections and Election Petitions at page 379, "It will therefore not be a sufficient compliance of this rule to allege generally in the petition that respondent by himself and other persons on his behalf was guilty of bribery, treating and undue influence before and after the election." The word used in sub-section (2) of section 83 of the Representation of People Act, 1951, is "shall" which shows that furnishing of full particulars in a list is mandatory. The provisions as contained in clauses (1), (2) and (3) of section 83 have made the law relating to particulars more stringent in India than in England. A petitioner has to disclose his case at the very

earliest opportunity. Section 83 is based on the opinion expressed by Bruce, J., in the Lancaster case (1895) 50 M. and H. 41.

#### DEFINITION AND OBJECTION OF PARTICULARS

Curiously enough, no commentator on election law has attempted to give a clear definition of the term "particulars". It has not been defined in the Representation of People Act, 1951, nor in Order 6, Rule 4, of the Code of Civil Procedure (V of 1908). Shortly stated, "particulars" may be described as the details of the case set up by the party. The details should be sufficient enough to enable the opposite party to prepare his case for the trial so that he may not be taken by surprise. The object of particulars is, *firstly*, to enable the opposite party to know what case he has to meet and, *secondly*, to prevent surprise, harassment and expense at the trial. As to what particulars are to be given must depend on the facts of each case. Each party must state his case with clarity and precision, otherwise his opponent will not know for certain what is the real point in dispute. The object is that issue may not be obscured by too little or too much details. It is clear from the wording of of sub-section (2) of section 83 of the Act that besides the names of the parties alleged to have committed any corrupt or illegal practice and the date and place of the commission of each practice, tribunal may call upon the petitioner to give more details about certain corrupt practices. Section 90 (4) of the Representation of People Act empowers the tribunal to dismiss an election petition for non-compliance with the provision of section 83. There is no ambiguity or obscurity in this language.

I am not unmindful of the fact that some confusion has arisen with regard to the expression "names of the parties alleged to have committed such corrupt or illegal practice." In the case of bribery, personation or hiring any vehicle or vessel or obtaining assistance from Government servants for the furtherance of the prospect of a candidate's election, both the parties are in *pari delicto*. They are parties to the corrupt practice and their names must be given in the list of particulars. As regards the corrupt practice of making or publication of false statement or undue influence the person to whom a false statement is made or a person who has been threatened is not a party to the corrupt practice and therefore his name need not be given in the list of particulars if such corrupt practices are alleged in the petition. Still, it is within the discretion of the Election Tribunal to call upon the party to supply the names of such a person or persons to narrow down the limits and scope of inquiry.

#### AMENDMENT OF PARTICULARS

Section 83 (3) of the Representation of People Act empowers the Tribunal to allow amend-

ment of the particulars or order such better and further particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition. It is obvious that Tribunal can allow amendment of particulars only in cases where some particulars have already been furnished in the original list. If no particulars are given, those paragraphs in the petition or the accompanying list should be struck off. This method was adopted in Bulandshahr case (I.H.I.E.P.86) and in Calcutta North case (Hammond's election cases India-Burma, 1920-35, page 253). Election petition was dismissed for want of particulars in Saharanpur case (I. H.I.E.P. 197) and in *Mc Linge Gouda V. M.K. Shivananjappa* decided by the Election Tribunal, Mysore, and reported in Gazette of India (Extraordinary), Part II, Section 3, dated 29-6-1953 at pages 2169 to 2190. Fresh instances of corrupt practice cannot be admitted by way of amendment of the particulars given in the petition. The Election Tribunal Fyzabad in *Smt. Shanta Devi Vaidya V. Sri Bashir Hussain Zaidi & other* in a very elaborate judgment, has stated the law on this point very clearly and succinctly and has referred to a number of cases at pages 3292 and 3293 of Gazette of India (Extraordinary), Part II, Section 3, dated 28-10-1953. To multiply decisions would be to document the evident. A period of limitation has been fixed by the Representation of People Act within which charges have to be preferred against returned candidates by way of election petition. To allow introduction of new and fresh instances of corrupt practices would amount to amendment of election petition. The Election Tribunal has no power to amend the election petition. There is considerable authority to support this contention. Numerous and unvarying decisions bear out this proposition. I think it would be frittering the language of the enactment to encourage a doubt on this point.

In the light of the principles enunciated above, the objections with regard to amendment or furnishing of better particulars will be dealt with while discussing the following issues.

#### ISSUE NO. 1 (FALSE STATEMENT)

*List 'A', item No. 1.* The petitioner alleges that "Sri Hira Singh during the period of about twenty days immediately preceding the date of polling widely circulated amongst the voters of the labour class employed on construction of the Arki-Kunihar road that the petitioner, Hari Das, was retaining Rs. 10 per head of the labour employed which he shared with the Ministers and that while the labour was being paid at Rs. 50 per month per head actually Rs. 60 per head per month

was being charged from the Government." In his better particulars, on 12th March 1954, the petitioner stated that, "the misstatement contained in this paragraph of the annexure was made near village Manjhat and Harri on the Kunihar-Arki road on or about the 28th and 29th June 1953 between the hours of 9 A.M. and 11 A.M."

It would have been better if the petitioner had mentioned these dates and the time of the alleged corrupt practices in his original petition, as from the evidence it is clear that he had such information with him before filing the election petition. In view of the fact that the petitioner in his original list mentioned "about 20 days immediately preceding the date of polling", the furnishing of better particulars is absolutely in order and warranted by law. The objection regarding vagueness of particulars has no force and is, therefore, overruled.

In order that the petitioner should bring his case within the ambit of section 123 (5) of the Act, the following conditions must be fulfilled:—

- (i) There must be a statement of fact as opposed to an expression of opinion.
- (ii) The statement of fact complained of must be untrue.
- (iii) The statement of fact must be in relation to the personal character and conduct of the candidate.
- (iv) The statement must be made for the purpose of affecting the election of the candidate.
- (v) The statement, which is false, must be one which the candidate either believes it to be false, or does not believe it to be true.

To support his allegation, the petitioner has produced P. Ws. 16, 17, 20, 21 and 29. P. W. 16, Prem Chand, who was working as a mate on the Kunihar-Arki road, states that, "Hira Singh respondent came there and told me and Chet Ram mate that our scale sanctioned by the Central Government was Rs 60 p. m. but we were paid Rs. 50 and the balance of Rs. 10 per head per mensem was being misappropriated by the petitioner, Hari Das, and P. W.D. Minister." He further states that after about half an hour he mentioned this fact to his supervisor, Padam Singh, P. W. 17. Padam Singh supports him in this respects and states that Prem Chand, Chet Ram and Jamnadas, mates, told him that Hira Singh Pal, respondent No. 1, told them that although "their pay" had been sanctioned by the Government at the rate of Rs. 60 per head, they were being paid Rs. 50 and the balance was being misappropriated by the petitioner and P. W. D.

Minister as deposed by P. W. 16. These two witnesses were examined on 6-4-1954. The petitioner, realising that the allegations contained in list 'A' did not relate to the pay of mates but to that of labourers, changed the front and produced on 19-5-1954 two witnesses, Chet Ram (P. W. 20) and Jamna Dass (P. W. 21). Both these witnesses stated that Sri Pal told them that coolies' authorised pay was Rs. 60 per head but they were being paid Rs. 50 only and the balance of Rs. 10 per head was being misappropriated by Hari Das and P. W. D. Minister. Hari Das, petitioner, as P. W. 29 states that Padam Singh supervisor of the road, informed him that he had received certain complaints from the mates as to the part of the labourers' pay being misappropriated by him (Hari Das) and P. W. D. Minister. The petitioner, however, does not state that Hira Singh Pal, respondent No. 1, was the person who made these false statements.

On careful scrutiny, I find that this evidence is highly unsatisfactory and, therefore, cannot be believed. *Firstly*, the allegations as set out in list 'A' item 1 are not supported by the evidence of P. Ws. 16 and 17. They are both unanimous in stating that the talk was with regard to the pay of the mates. Both P. Ws. 20 and 21 depose that the pay of the mate was Rs. 56/4/- p. m. It passes one's comprehension that respondent No. 1 would tell a mate that his pay was Rs. 60 while he was being paid Rs. 50 only, when, as a matter of fact, his pay was Rs. 56/4/-. It is natural to expect that the mate would at once contradict him and tell him that his pay was Rs. 56/4/-. It is difficult to imagine that they would not contradict him. But none of the P. Ws. contradicted respondent No. 1, in this respect. *Secondly*, the evidence is conflicting. The first two witnesses, i. e. P. Ws. 16 and 17 depose about the pay of the mates while the other P. Ws. refer to the pay of the coolies. It is remarkable that coolies' pay could not be more than Rs. 56/4/-, which was being drawn by a mate. The alleged false statement ascribed to Hira Singh Pal, respondent No. 1 seems to be not only inherently improbable but unnatural. When the alleged false statement is oral and not contained in any poster or handbill, it is essential that the exact words of the false statement must be proved by cogent and convincing evidence. Everybody is not endowed with good memory. Impression created by talk may fade or become obliterated by lapse of time. In the instant case, witnesses appeared before this Tribunal after 9 or 10 months of the alleged talk. It is extremely difficult for them to remember the exact words spoken by respondent No. 1. Hence, we find two versions of the talk by two different sets of witnesses. Reflection will satisfy that chance of injustice is not remote or shadowy. In such a case it is incumbent on the Tribunal to scan the evidence with care and caution in order to determine its credibility and sufficiency. *Thirdly*, Padam Singh super-

visor is quite clear in his statement that Prom Chand, Chet Ram and Jamnadas, mates told him that Hira Singh mentioned about "their pay", while Chet Ram and Jamana Dass refer to the pay of coolies. *Fourthly*, the petitioner, as P. W. 29, deposes that, "labour was working in the strength of about 1,000 and belonged to my tahsil. This false propaganda was done towards the end of June and the beginning of July." All the P. Ws. are unanimous in deposing that Hira Singh Pal did not talk to the coolies at all although they were working, with their crow-bars, at a distance of about 20 to 25 paces. It seems rather curious that Hira Singh Pal, who wanted to enlist support of the labourers, did not have any talk with the coolies working there and only mentioned the fact regarding pay of coolies to P. Ws. 20 and 21 only. *Fifthly*, Padam Singh, P. W. 17, says that he complained in writing to the Executive Engineer and the Minister P. W. D. about this matter but he received no acknowledgment. He further deposes that he did not keep any copy of the letter. The petitioner did not summon the said complaint in writing from the Executive Engineer and the Minister P. W. D. If such a document had been produced before the Tribunal, it would have thrown sufficient light on the real matter. Non-production of documentary evidence is a circumstance against the petitioners.

After weighing the conflicting evidence on the record and subjecting it to critical scrutiny, it appears that, most probably, it was P. W. 17, Padam Singh, supervisor, who seems to have arranged all this evidence to do a good turn to the petitioner. Nor is there any persuasive reason for taking any other view. In his cross-examination, he says, "I was the agent of Hari Das in the election before the present one. In fact, I was appointed by the Congress to work for its candidate. At that time Hari Das was being opposed by Hira Singh and one other. After that election was over, I was appointed a supervisor in the P. W. D." It is clear that Padam Singh is a highly interested witness and it was not very difficult for him to obtain the evidence of two or three mates working under him to support Hari Das for whom he worked as an agent in the election. Moreover, it has not been shown that the statement was reasonably calculated to prejudice the prospect of candidate's election. Hira Singh Pal as R. W. 13 denies having made any such propaganda. I cannot say that any doubt has been infused into my mind upon the subject matter of this issue which appears to me to be capable of easy solution.

Considering the highly unsatisfactory nature of evidence on the record, I am clearly of the opinion that this part of the issue is not proved. The issue is decided against the petitioner.



*Issue 1, item No. 2.*—The petitioner in list 'A' item No. 2, alleges that, "Sri Hira Singh Pal, respondent No. 1, and his agents Sri Dhani Ram and Hari Ram during the election propaganda openly exhorted people not to vote for the petitioner as he had ceased to be a Hindu." In his better particulars on 12th March, 1954, he stated that "the propaganda about the petitioner having ceased to be a Hindu was carried on from 1st to 4th July, 1953 in villages Kunibar, Batal, Rampur and Arki, during the morning and the evening hours by visiting the houses of villagers' personally."

Preliminarily, it may be noted that, as no particulars of the place, date and time had been given in the original list which was too vague, amendment should not be allowed because it would open the door to the petitioner to search for evidence throughout the constituency as may suit him. However, as the Tribunal allowed him an opportunity to amplify these particulars, I am faced, in the instant case, with the necessity of carefully appreciating the evidence on this point.

To substantiate his allegation, the petitioner has produced P. Ws. 14, 15 and 25. He has offered himself as witness P. W. 29, P. W. 14. Jagat Bhaskar states that in the first week of July, respondent No. 1 came to his house and told him that Hari Das petitioner should not be given vote as he had married a muslim woman and had become a Muslim by faith. P. W. 15, Chet Ram, deposes that respondent No. 1 told him that Hari Das had kept a Muslim woman as a mistress and to vote for him would be to vote for a Muslim. Similarly, P. W. 25, Chajju Ram, deposes that, "Hari Das was not a man of good principles and that he was not a Hindu as he was keeping a Muslim woman." Hari Das, petitioner, as P. W. 29, stated that Dhani Ram, Hari Ram and Hira Singh were openly declaring that he had kept a Muslim woman as a mistress. He, in fact, did not mention in his evidence whether there was any Muslim woman residing with him or not. On 23-8-1954, he was recalled by the Tribunal. In his supplementary statement, he stated, "I know Mt. Barkate. She is above 55 in age. Her husband died during the general election. I have her shelter during the riots of 1947. She works in my house as a domestic servant in lieu of food and clothing. At one time, she used to cook food for us when my wife was ill. But now she does not." In his cross-examination, he admits that the difference between the ages of Nabi Baksh and his wife Barkate was about 15 years. He further states that he made a statement as a witness in the election petition arising out of the general election. There, he gave the age of Nabi Baksh as 47 years. On subsequent varification from his widow, he says, that he was about 75 years of age. It appears that Mt. Barkate is a young widow who is 15 years younger than her deceased husband. His age was given as 47 years.

Hence, her age, according to this calculation, would be about 32 or 35. It appears that the petitioner is intentionally giving her age as 55 so that some adverse conclusion may not be drawn from the fact that she had been living with him for so many years. There is absolutely no corroboration of the evidence of P. W. 14, P. W. 15 and P. W. 25. P. W. 14 says that the only other person who was present at the time of the talk was his father. He has not been produced. P. W. 14 states that he mentioned this fact only to Kesho Ram, Congress Secretary. Kesho Ram was examined as P. W. 23 but no question was put to him regarding this matter. Similarly, P. W. 15 says that none else was present when this talk took place.

Their evidence stands uncorroborated.

#### QUESTION OF EVIDENCE IN ELECTION CASES

The allegation of corrupt practice is a quasi criminal charge. The charge of false statement is a serious charge, in fact, a criminal charge. The expression used in sections 99 and 100 of the Act is "guilty of any corrupt or illegal practice." This also suggests that the charge is a of criminal nature. Bribery, undue influence, personation, false statement, illegal payments and failure to keep account at or in connection with election are offences punishable with imprisonment or fine under section 171E to Section 171 I of the penal Code. Moreover, commission of corrupt or illegal practice relating to the election entails penalty by way of disqualification for membership of Parliament and the State Legislature for a period of four to six years. Citation of authority is unnecessary to establish such a plain proposition. Hence, evidence requisite to prove false statement should not fall short of evidence required to prove any criminal charge. Generally speaking, a person cannot be found guilty on the uncorroborated evidence of a single witness. Courts always expect, as a matter of prudence, some corroboration. If there is any reasonable doubt, the benefit goes to the sitting member.

P. W. 25, Chajju Ram, is a highly interested witness. He admits that, "In the general Election, I was a polling agent of Hari Das. I am the Secretary of the Congress Committee Pargana Kunihar.....I was never any office-bearer of Arki Congress Committee. After acceptance of the previous petition of Hari Das a leaflet was published over my name. Exhibit R. 1 is one such handbill. This handbill gives my description as Secretary, Congress Committee, Arki. As a matter of fact, it should have been Secretary, Congress Committee, Kunihar..... For one year I was a partner with Hari Das in preparation of *katha*. I appeared as a witness for Hari Dass in a civil case instituted by Babu Ram Sharm against Hari Das.... In the previous election petition I also appeared as a witness for Hari Dass." From the mere perusal of this evidence, it is abundantly clear that this witness is

interested in the petitioner and his evidence should not carry weight unless corroborated by other independent evidence. Exhibit R. 1 is directed against respondents 1 and 2 and is couched in very strong terms. In poster Exhibit R. I. Chajju Ram (P. W. 25), Secretary, Congress Committee, Tehsil Arki, says that the election of Sri Hira Singh Pal and Ram Das has been set aside on election petition and they have given themselves out as candidates. To get a salary of Rs. 150 a month, they will canvass votes by holding out false promises and will make false propaganda to mislead people. Hence, people should be on their guard and not to be deceived by these persons. It shows that the witness is not well inclined towards contesting respondent. In his cross-examination, this witness admits the presence of Sham Lal Bhandari and Sita Ram at the time when the alleged false statement was made to him by Hari Ram and Dhani Ram. Sita Ram was not produced and Sham Lal Bhandari was given up. There is no evidence to corroborate his version.

In rebuttal, Hari Ram (R. W. 10) has been produced. He denies having done any propaganda against the petitioner, that he had kept a Muslim woman and to vote for him was to spread Islam. R. W. 4, Narotam, states that Sri Pal did not visit Chet Ram's shop. His evidence is of negative character. Hira Singh Pal, respondent No. 1, as R. W. 13, denies on oath having made any propaganda with regard to Hari Das having ceased to be Hindu.

It has strenuously been urged by the learned counsel for respondent No. 1 that villages of Dhani Ram and Hari Ram are at a distance of 20 miles from Hatkot Kunihar and it is not conceivable that they would travel 20 miles from their village and go to Kunihar to tell Chajju Ram (P. W. 25) who is the Congress Secretary, that Hari Das was keeping a Muslim woman. It is admitted that both Hari Das and Barkate are living at Hatkot Kunihar since 1947. If Hari Ram and Dhani Ram had to make such propaganda, they would not travel 20 miles and go to their village and canvass for votes. Secondly, it passes one's imagination that they should go to a person (Chajju Ram) who was an election agent of Hari Das in the general election and who had issued the poster Exhibit R/1 in favour of Hari Das and against respondent No. 1. Petitioner's evidence is not only interested but untrustworthy and unreliable. Admission of Hari Das, petitioner, that Mt. Barkate is living with him as domestic servant since 1947, makes his case rather weak. In such circumstances, a statement by a person that Hari Das is keeping a Muslim woman would hardly be considered objectionable. He admits that he never contradicted this statement in press or otherwise. There are, here, no facts really in dispute in this case with regard to Muslim woman having been kept by Hari Das petitioner.

It appears to me that this is a particular plain case. I am clearly of the opinion that the petitioner has failed to substantiate this issue and, accordingly, I decide it against him.

#### ISSUE NO. 2 ASSISTANCE OF GOVERNMENT SERVANTS

*Hari Ram Lambardar.*—The allegation contained in list 'B', item No. 1, is that Hari Ram, son of Moola Ram of Toru, Pargana Sialath, Tehsil Arki, Lambardar, for about a week before 8th July 1953, worked for Sri Hira Singh Pal in the Dhundan area. He was paid Rs. 50 by Sri Hira Singh to work for him. He was suspended on having been found doing this propaganda. In his better particulars, the petitioner amplified the area Dhundan as Dhundan village proper as well as village Toru. The respondent denied the allegation.

This is the main issue in the case. The whole controversy centred round it. Petitioner strongly relies on this issue and respondent's most vigorous and relentless attack is directed at it.

To substantiate his allegation, the petitioner produced P.Ws. 1, 2, 6, 8, 18, 19, 22, 23 and 26, while the respondent examined R.Ws. 6, 11, 12 and 13. Some documentary evidence has also been produced in this connection, which will be dealt with separately. In order to have clear understanding of the whole matter in issue, it will be convenient to consider this issue, under three heads, i. e. oral evidence, affidavit of Hari Ram Lambardar and departmental inquiry against Hari Ram.

*Oral evidence.*—Petitioner has examined P. W. 1, Atma Ram, P. W. 2, Hari Ram, P. W. 8, Sudama Ram, P. W. 22, Achra Ram and P. W. 26, Swarnu, in this respect.

P. W. 1, Atma Ram, deposes that about 15 days before the poll took place, the Lambardar came to his hotel and canvassed for Hira Singh respondent saying that he was his own man. In his cross examination, he admits that that was the only occasion when this talk took place and no other person of the locality was present there. He further states that it was Achra Ram who started the conversation and asked the Lambardar in whose favour the votes were to be polled and it was in this context that the Lambardar Hari Ram said that Hira Singh was his man. No other talk took place. He also states that Sudama Ram and Achra Ram were canvassing for Hari Das. The witness frankly admits that he was the supporter of Hari Das petitioner. P. W. 8, Sudama Ram, states that at the hotel of Atma Ram (P.W.1), Achra Ram (P. W. 22) enquired from Hari Ram in his presence as to the person in whose favour the vote should be cast. Hari Ram

replied that vote should be cast in favour of Hira Singh. Achra Ram (P. W. 22) corroborates these witnesses and says, "It was I who enquired from him about casting of votes." These are the only three witnesses who depose about the talk that place at the hotel of Atma Ram, P. W. 1, on that solitary occasion.

Preliminarily, I may clear the ground by pointing out that mere asking the opinion of a Lambardar by a person regarding the candidate in whose favour the vote should be polled does not fall within the mischief of section 123 (8) of the Representation of People Act, 1951. Section 123 (8) runs as follows:—

"The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person."

The chief person, who started the talk is P. W. 22 Achra Ram. He admits that it was he who enquired from the Lambardar about casting of votes. This will not amount to obtaining or procuring the assistance of a person serving under the Government for the furtherance of the prospect of the candidate's election. This witness, in his cross-examination, admits that in the bye-election he supported the Congress candidate, i. e. the petitioner. He appeared as a witness in the last election petition, which was filed by Hari Das petitioner against Hira Singh Pal, respondent No. 1. P. W. 1 admits that Achra Ram and Sudama Ram (P. W. 8) were canvassing for Hari Das. P. W. 8, Sudama Ram states that, "Achra Ram is a Congress man". It may be noted that merely belonging to one party or other does not necessarily detract from the evidence given by a witness belonging to that party. But, in this case, there are circumstances which fully establish that these witnesses cannot be relied upon. P. W. 22 was recalled on 23-8-1954. In his supplementary statement, he categorically denied being the polling agent of Hari Das at Dhundan in the general election. He was confronted with his previous statement made on 6-9-1952 before the previous Election Tribunal, wherein he stated, "I was a polling agent of Hari Das petitioner at Dhundan." The witness replied that he did not remember whether he stated so. The statement was read over to him and he was again given opportunity to offer an explanation. The only explanation he offered was that he might have given the answer to the question in the previous election

petition inadvertently. The witness is interested in the petitioner who was a Congress candidate and had resiled from his previous statement. Therefore, much reliance cannot be placed on his evidence. Similarly, Atma Ram (P. W. 1) admits that he was the supporter of Hari Das. He did not make any complaint to any body with regard to this matter, although he admits that Dr. Parmar, Chief Minister, Sri Padam Dev, Minister and the Tehsildar visited Dhundan during those days.

P. W. 8, Sudama Ram, had a personal motive because he was appointed Lambardar in place of Hari Ram Lambardar who had been suspended by the Chief Minister. During the departmental inquiry before the Tehsildar against Hari Ram Lambardar, Sudama Ram (P. W. 8) appeared as a witness. In his cross-examination, he admits, "I was examined by the Tehsildar at Arki but I did not refer to the above incident in making the statement before him." It is to be noted that a departmental inquiry was going on against Hari Ram Lambardar on the charge that he rendered assistance to Hira Singh Pal during the election. Knowing fully well the nature of the inquiry, P. W. 8, Sudama Ram, made no mention about the talk that took place in Atma Ram's hotel. Nor did he mention this talk to any of the villagers. He further admits that he made no complaint to any officer in this connection. The oral evidence produced by the petitioner is not convincing and cannot be relied upon. Evidence of P. W. 26 is uncorroborated and untrustworthy.

Even assuming that such a talk did take place at the hotel, all that is proved is that Achra Ram enquired from Hari Ram Lambardar as to the candidate for whom the vote should be polled. In such circumstances, even if Hari Ram Lambardar says that Hira Singh Pal was the fit person as he was his own man this will not fall within the purview of section 123 (8) of the Representation of People Act, 1951. It is admitted that Achra Ram was working for the Congress candidate and was canvassing votes for Hari Das. The talk, if any, could not be of a serious nature. At the most, it can be described to be a coffee shop gossip.

There is not even a scintilla of evidence on the record to show that it was Hira Singh, respondent No. 1, or his agent, who asked Hari Ram Lambardar to canvass vote for him. Under section 123 (8) of the Act, it is necessary to prove that the candidate obtained or produced or abetted or attempted to obtain or procure any assistance for the furtherance of the prospect of his election.

According to Oxford Dictionary, 'obtain' means primarily "to come into possession or enjoyment of (something) by one's own effort or by request; to procure or gain as the result

of purpose and effort; hence, generally to acquire or get." The word 'obtain' connotes voluntary effort or some positive act on the part of the candidate to get assistance from a person serving under the Government. This is the essential ingredient of the charge under section 123 (8) of the Act. In the absence of such evidence, charge cannot be brought home to the candidate.

Petitioner has examined Hari Ram, Lambardar, as his own witness, P. W. 2. He states that affidavit Ex. P. 1 was signed by him and that he was suspended from his office four months ago and was removed from lambardari 10 or 12 days ago. He further states, "I do not know why I have been removed from the office. I was simply asked if I had done any work in connection with the polling. No further question was put to me in those proceedings, when I admitted that I had done some work in that connection. Work done by me consisted of bringing and arranging the furniture at the instance of the Patwari to put in the polling booth. I was also asked if I had canvassed for Hira Singh respondent. But I denied that imputation. I signed the statement made by me before the Tehsildar. It is incorrect that I worked for Hira Singh." As the witness had made a contradictory statement before the Tehsildar, counsel for the petitioner was given permission to put questions by way cross-examination. In the cross-examination, he denied the contents of Ex. P. 1, although he admitted that at three places he put his signatures. The witness denied having visited the hotel of Atma Ram 5 or 10 days before the polling day. Learned Counsel for the respondent cross-examined him on certain points and the witness admitted that he never got a sum of Rs. 50 from respondent Hira Singh for doing election work. Nor did he solicit votes for Hira Singh Pal. He denied having asked Atma Ram P. W. 1 to vote for Hira Singh.

#### AFFIDAVIT OF HARI RAM

Petitioner has produced affidavit of Hari Ram, Lambardar, Ex. P. 1, and relies heavily on it. As this document has some important bearing on the case, it is desirable that its contents should be set out in the judgment. The affidavit runs as follows :—

- "(1) I solemnly declare that the polling of Solan Constituency took place on 19th July, 1953.
- (2) I solemnly declare that I am Lambardar of Dhialti area and Sri Hira Singh candidate paid me Rs. 50 for doing propaganda for him in the election and asked me to distribute parchies to the voters.
- (3) I solemnly declare that I am ignorant person and I am not conversant with

rules and regulations and therefore worked for Sri Hira Singh Pal.

- (4) I solemnly declare that Sri Hira Singh Pal got the propaganda done through me to the effect that Sri Hari Das kept a Muslim woman and ceased to be a Hindu and to vote for him was to propagate Islam.
- (5) I solemnly declare that my affidavit is true and nothing has been concealed and no part of it is false."

This affidavit bears the date 18th August, 1953. It has been scribed by Brij Lal, petitioner-writer P. W. 9, and is attested by Sri Moti Sagar, Oath Commissioner, Arki, on the said date. Hari Ram, P. W. 2, admits having put his signature on the affidavit and below the attestation. He denies the contents of this affidavit and says that it was not read over to him. Nor was it read over to him by Sri Moti Sagar before he affixed his signature. The suggestion of the defence is that Keshab Ram and Hari Das, petitioner, met the petitioner-writer, Brij Lal, on 18th August, 1953, took him aside and had a private talk with him, and that in collusion with the petitioner-writer, they brought this affidavit into existence instead of ordinary application on behalf of Hari Ram, Lambardar, protesting against his suspension. Respondent No. 1 has examined Surju (R. W. 11) to prove his contention. This witness also got a complaint scribed by the petitioner-writer against Devi Chand and others on 18th August, 1953. The witness states that he wanted his petition to be written first, but Keshab Ram prevailed upon the petitioner-writer to show priority to Hari Ram Lambardar's work. He also admits that Keshab Ram and Hari Das, petitioner, took the petitioner-writer aside and had some private talk with him. He says that in his presence Hari Ram Lambardar told the petitioner-writer that he had been suspended from lambardari, although he had not taken party in the election for any body and the petition was to be addressed to the Deputy Commissioner or the Tehsildar. At that time, Keshab Ram assured Hari Ram Lambardar and said that he should not worry about the matter and that he would get him reinstated.

It is an admitted fact that this witness was at Arki and got the complaint scribed by the petitioner-writer on the same date as the affidavit Ex. P. 1. In cross-examination, he states that his complaint was written by the petitioner-writer at about 1 P. M., although he reached Court at about 9-30 A.M. The learned counsel for the petitioner could not elicit any matter in cross-examination, which would go to shake his veracity. It appears that Keshab Ram, P. W. 23, who is Secretary, Congress Committee, Arki, was instrumental in bringing into existence such

an affidavit. In his statement before the Tribunal on 19-5-54, P.W. 23, Keshab Ram admits, "I am Secretary of the Congress Committee Arki... In August, last, Hari Ram came to me with Ex. P. 1. He stated that it was his affidavit referring to the mistake which he had made and sought our help requesting us to bring this matter to the notice of the Government.. I kept this document for passing on to Hari Das, petitioner, who is General Secretary of the Congress Committee, Arki...Accordingly, I gave Ex. P. 1 to Hari Das". In his cross-examination, he states that in the last general election, Hari Das, petitioner, and the witness were Congress candidates and in the last bye-election, he supported Hari Das and Rup Ram, who were Congress candidates. In fact, he was polling agent of Rup Ram for Arki. He denied the fact that Ex. P. 1 was written by Brij Lal, petition-writer, in his presence. This witness is highly interested in Hari Das petitioner. Hari Das petitioner as P. W. 29, admits that "Ex. P. 1 was in my possession when I got my election petition drafted." The whole election was being run by the Congress party and Hari Das, petitioner, was a figure head. In his cross-examination, he says, "At page 3 of Ex. P. W. 24/A, one Bali Ram was my polling agent at Naugaon. I do not know if he is the same Bali Ram who appeared as P.W. for me because forms of polling agents were signed by me and handed over to my party workers who filled up the names of the polling agents." He further states, "After his suspension, Hari Ram, Lambardar met me once or twice at Arki. But I cannot say whether he met me on the 18th August 1953." As we have seen earlier, Surju Ram (R. W. 11) stated on oath that both Keshab Ram and Hari Das were at Arki and took the petition-writer, Brij Lal, aside and had a talk with him. Hari Das, petitioner, has not categorically denied this fact while being examined as P. W. 29. He says that Hari Ram Lambardar, met him to enquire if anything had been done for his reinstatement. The above circumstances throw a considerable doubt regarding the genuineness of the affidavit.

#### INTRINSIC EVIDENCE OF AFFIDAVIT

The affidavit, Ex. P.1, as translated above, bears certain traces intrinsically that the said document is an engineered one. The reasons are not far to seek. Firstly, it may be noted that the polling took place on 19-7-1953. According to P.W. 6, Sri Durga Das Tehsildar, the suspension order was passed by the Chief Minister, Dr. Y. S. Parmar, on 11-7-1953, was issued from office on 29-7-1953 and served on Hari Ram, Lambardar, before 2-8-1953. The result of election was declared on 25-7-1953 and published in the Gazette of India on 30-7-1953. The election petition was filed on 30-9-1953. Thakur Raghubir Singh, Collector, Mahasu, issued notice to Hari Ram Lambardar, on 28-7-1953 stating therein that he had made

propaganda in favour of some candidate during the bye-election of Solan Constituency. This notice was served on him on 17-8-1953. The notice does not state that he had worked for Hira Singh Pal, respondent No. 1. Next day, i. e. on 18-8-1953, the affidavit was written. One would naturally expect that a Lambardar against whom some complaint had been made would protect his interest by pleading ignorance or denial of the fact. On the contrary, we find that he mentions the following facts in his affidavit :—

- (i) that Hira Singh candidate paid him Rs. 50.
- (ii) that Hira Singh got his propaganda done through him.
- (iii) that Hira Singh asked him to distribute parchis of the voters.
- (iv) that Hira Singh Pal got the propaganda done through him that Hari Das was keeping a Muslim woman and that he had ceased to be a Hindu and that to vote for him would be to propagate Islam.

The fact leaps to the eye that these matters are quite extraneous to the defence of Hari Ram, Lambardar, inconsistent with the position taken up by him before the Tribunal and that these are the main allegations in the election petition as well.

The key fact of this case is that no evidence has been led by the petitioner with regard to the payment of Rs. 50 to Hari Ram, Lambardar by Sri Hira Singh Pal, respondent No. 1, nor about distribution of parchis to voters, nor regarding the keeping of Muslim woman. The conclusion is inescapable that this affidavit was a got up affair and was brought into existence to supply documentary evidence for the purpose of election petition. The learned counsel for the petitioner was asked as to why all these things were embodied in the affidavit and whether this could be the natural conduct of a Lambardar who had been suspended and against whom notice had been issued why he should not be removed. He frankly conceded that there must be some persons behind the scene but he could not throw further light on the subject.

The affidavit is written on a stamped paper of Rs. 2. It is not addressed to any Court or Revenue Officer or any other authority. This affidavit came into the hands of Congress Secretary, Keshab Ram, who handed it over to Sri Hari Das, petitioner, and the petitioner filed it before the Tribunal in support of his petition. This is an additional compelling consideration



which has brought into strong light, the faked nature of the affidavit.

#### ADMISSIBILITY OF AFFIDAVIT

The question of admissibility of affidavit has been raised with special emphasis. I have carefully discussed the affidavit at length and have come to the conclusion that it is a suspicious document and was brought into existence to support the claim of the petitioner. Hari Ram, Lambardar, does not admit the contents of this affidavit. It may be that Hari Ram Lambardar may not be giving true version of the affair. His denial about the statement made by him to the Tehsildar proves him to be an unreliable witness. The question, however, remains whether such an affidavit is legally admissible in evidence and if so, what is its evidentiary value. If Hari Ram, Lambardar, had admitted the contents of Ex. P. 1, it would have fully corroborated his evidence and would have given a different complexion to the whole matter. But as he has denied the contents of this document, it can only be used to contradict his evidence or to show that he is unreliable witness. Such a document cannot be used as a substantive piece of evidence. Under section 164 of the Code of Criminal Procedure, 1898, if a statement is recorded by a Magistrate it is not substantive evidence. A statement so recorded cannot be admitted as a substantive evidence against the accused person but it can only be used for contradicting the maker of the statement, or for corroborating him. It has been laid down by the Privy Council in *Mamand V Emperor* A. I. R. 1946, Privy Council 45, that where it appears that witness has been won over by the opposite party after he had made his statement under section 164, the evidence given by him in Court should be entirely ignored. In *Brij Bhushan v. Emperor* A. I. R. 1946 Privy Council 38, it was held that statement under section 164 can be used to cross-examine the person making it. Similarly, it has been remarked in *Keratali v. Emperor* A. I. R. 1934 Calcutta 616 that a statement recorded under section 164 cannot be used as a substantive evidence but can be used for the purpose of impeaching credit of the witness under section 155, Evidence Act. As pointed out in *Samser Ali V Emperor* A. I. R. 1947, Calcutta 342, a previous statement of a witness in a previous trial can be put in for contradicting him. It does not become substantive evidence. It only shows that the witness is unreliable. Holding in these cases is determinative of the present controversy.

Tested in the light of foregoing principles and decisions, I find that affidavit Ex. P. 1 cannot be used as substantive piece of evidence against respondent No. 1. In sum, it has absolutely no

evidentiary value, except that Hari Ram, Lambardar, is a witness who cannot be relied upon. This does not advance the case of the petitioner at all.

#### DEPARTMENTAL INQUIRY

Sri Durga Das, Tehsildar (P. W. 6) deposes that Hari Ram, Lambardar, was suspended by an order in writing by Dr. Parmar, Chief Minister, on 11-7-1953. It is curious that this suspension order does not mention as to the name of the candidate for whom Hari Ram Lambardar was working. It may be that the Chief Minister received some information or village gossip from some person but there is nothing on the record to show as to who was the informant and what information was conveyed to the Chief Minister. In view of the fact that a number of P. Ws. depose about making complaints to the Chief Minister, it was essential that the petitioner should have examined Dr. Parmar, Chief Minister, as his witness. In his evidence, as P. W. 29, petitioner says, "I accompanied the Chief Minister in his tour. His stay in the constituency from 1st to 17th July was continuous, but after 25th June was intermittent." Then the petitioner gives the names of the villages which the Chief Minister visited from 1st to 17th July. It is not clear under what authority the Chief Minister suspended Hari Ram Lambardar. According to the Punjab Land Revenue Act, 1887, which is applicable to Himachal Pradesh, the power to suspend or dismiss is given to the Collector whose order is appealable to the Commissioner and revisable by the Financial Commissioner. Under the Indian Constitution ours is a Government of laws and not of men. Every officer's power is circumscribed and limited by the statutes enacted in conformity with the Constitution. The petitioner's Counsel was called upon to quote any law, rule or regulation under which the Chief Minister could suspend a Lambardar, but he failed to do so. Contrariety of this view was not pressed to our attention.

As previously remarked, a notice was issued to the Lambardar to show cause why action should not be taken against him because he had done some propaganda during the election in favour of some candidate. The name of Sri Hira Singh Pal is not mentioned therein. It appears that on the date of the notice, i.e. on 18-7-1953 the Collector, Mahasu, did not have in his possession any information that Hari Ram, Lambardar, had done propaganda for Hira Singh Pal, respondent No. 1, otherwise, notice should have made mention about it. The inquiry was transferred to the Tehsildar, Sri Durga Das, P. W. 6. On 28-12-1953, he recorded the statement of Hari Ram, Lambardar, wherein he stated that he canvassed for Sri Hira Singh Pal candidate during the bye-election due to ignorance and begged to be pardoned. This statement was not taken on oath because according to P. W. 6, it was not necessary.

in revenue cases. Hari Ram Lambardar denies this statement on oath. I am not prepared to believe the statement of Lambardar Hari Ram on this point. It is fully proved by the evidence of P. W. 6 that such a statement was made to him and I do not doubt the veracity of Sri Durga Das, Tehsildar, Kasumpti. It shows that Hari Ram Lambardar, is utterly irresponsible person and his veracity is not above suspicion. As previously stated, the evidentiary value of such a statement is the same as that of Ex.P.1. It is not a substantive piece of evidence and can be used only for contradicting the witness. It is regrettable that such a statement was not taken on oath, and no evidence was recorded to show that he actually took part in the election rendering assistance to respondent No. 1. On 28-12-1953, Sri Durga Das, Tehsildar, Kasumpti, merely relying on the statement of Hari Ram Lambardar reported to the authorities that as Hari Ram Lambardar pleaded guilty, severe action should be taken against him. It is remarkable that during the whole departmental inquiry no body came forward to depose that Hari Ram Lambardar had assisted Hira Singh Pal in his election. In his statement before the Tehsildar, Hari Ram does not say that the canvassing was done by him at the instance of Hira Singh Pal. He merely confessed the guilt and threw himself at the mercy of the Revenue Officer. Different persons are differently constituted and some, though innocent, plead guilty in order to get away with light punishment, or do some other foolish thing, e.g. abscond or pay back money alleged to have been embezzled. This may be the case with Hari Ram Lambardar.

Respondent has examined R. Ws. 6, 11, 12 and has offered himself as witness. The evidence is of a negative character, excepting that R. W. 11 Surju Ram, whose evidence has been discussed already. Respondent also urges that as number of Ministers were touring the constituency and visiting number of villages it was highly improbable for any Lambardar or Patwari or any other Government servant to do propaganda for Hira Singh Pal who was a Socialist candidate as against Hari Das who was Congress nominee.

#### CANVASSING BY MINISTERS

It is in the evidence of Sri Hari Das, petitioner, (P.W.29) that Dr. Parmar, Chief Minister, Sri Padam Dev and Sri Gauri Prasad, Ministers of Himachal Pradesh, and some Union Ministers toured the constituency and canvassed support for him, being a congress candidate. As this matter does not arise directly in this petition, I do not feel called upon to discuss it at length and express my views on the limitations of their powers to canvass for a candidate. The opinion thus expressed will be obiter, and I reserve it for any future occasion, if it may ever arise.

In passing, I may say that the Ministers have no unrestricted powers to canvass for any candidate in the election, although they may legitimately address meetings to propagate their party's principles and programme.

I have carefully gone through other evidence pertaining to this issue, and I find that it has no material bearing on the point under consideration.

Giving my anxious consideration to the whole of the evidence on the record, I find that this part of the issue relating to assistance by Hari Ram Lambardar has not been proved and I decide it against the petitioner.

*Dila Ram Patwari.* The allegation regarding Dila Ram Patwari is contained in list 'B' paragraph 2, which runs thus:— "Sri Dila Ram Patwari of Patwarkhana Chandi, Mahlog, Tehsil Solan, for about three weeks prior to 19th July, 1953 did extensive propaganda for Sri Hira Singh at his request in the Patwar Halqa of Chandi. He was found distributing chits and handbills of Sri Hira Singh and was suspended on this account on July 18, 1953". In his statement of better particulars, the petitioner stated that "by Chandi Patwar Halqa" is meant Chandi proper and village Gharsi and Rampur where the propaganda was carried on or about the 25th June, 1953.

Respondent's counsel has vehemently urged that Rampur is not included in Chandi Patwar Halqa and, therefore, word "Rampur" should be deleted from the statement of better particulars. Petitioner's learned council admits that Rampur is not included in the Patwar Halqa Chandi, but adjoins the Patwar Halqa of Chandi and, therefore, it should be deemed to be part of Patwar Halqa Chandi. I am afraid, I cannot accept this contention of petitioner's learned council. Analogy combines with reason in telling us that this is not the law. I am of opinion that respondent's objection in this respect is well taken.

Amendment cannot be allowed to introduce fresh instance of corruption committed in other places, otherwise it will amount to amendment of the election petition itself. The Election Tribunal has no jurisdiction to amend the election petition. As discussed above under the preliminary issue, I have laid down that amendment cannot be allowed to introduce fresh instance of a corrupt or illegal practice. To include Rampur in Patwar Halqa Chandi will be infringing the well-settled principles regarding amendment of statement of better particulars. I hold that any evidence led with regard to canvassing done by Dila Ram Patwari in Rampur shall be deemed to be irrelevant and will not be considered against respondent No.1.

In order to prove this issue, petitioner has produced P.Ws. 9, 10, 11, 12 and 28. P.W. 9, Brij Lal, Signal's School Mahu (Madhya Bharat) states that last year he was on leave from 25th May to 25th July and had grocer's shop in village Chandi. He deposes that, "there was a talk between me and Dila Ram Patwari who recommended the name of Hira Singh respondent as a suitable candidate to be voted for as he was well educated man. The Patwari gave me a slip like Ex.P.2." In his cross-examination, he admits that none else was present, that he was not a voter and he did not mention this talk to any one of the villagers. He further admits that the Ministers visited the village but he did not mention this fact to them, nor to Tehsildar or any other official. It is curious that Dila Ram, who is a literate man, should approach a Government servant who was on a short leave and who was not a voter for the purpose of soliciting a vote from him. From the evidence it appears that Dila Ram did not solicit any vote but during a talk recommended the name of Hira Singh respondent.

There is not an iota of evidence on record to show that Dila Ram was canvassing votes at the instance of or with the connivance of Hira Singh Pal, respondent No. 1 or his agent. Petitioner in his statement does not state as to how he came to know about this fact specially when P.W.9 says that he mentioned it to none.

P.W.10, Shiv Ram, states that Dila Ram Patwari met him at the shop of Brij Lal, gave him a slip like Ex. P. 2 and recommended that he should pull for Hira Singh as he was a literate person. This witness is a Headmaster of the Primary School at Chandi. This witness appeared before Sri Raghubir Singh, Deputy Commissioner, Mahasu, who held departmental inquiry against Dila Ram Patwari. He made a statement on oath in that inquiry marked Ex. C. I. The witness admits that statement to be correct. In that statement dated 4-3-1954, Shiv Ram stated, "I do not know whether Dila Ram Patwari took any part in the election or not.....I do not know whether Dila Ram distributed any parchis in the election." He further stated that few persons got the names of 5 or 6 persons written on a piece of paper but he did not know why they were being written. This witness was recalled on 16-7-1954 in view of the fact that departmental file was available to the Tribunal only then and there a contradictory statement was made by the witness. The witness admits that he was asked by his department not to take part in the election. He did not bring this fact to the notice of any authority nor did he mention about it in his previous statement Exhibit C. I. In fact, he gave absolutely different version before Sri Raghubir Singh, Deputy Commissioner, Mahasu. He

explicitly stated before him that he did not know at all if Dila Ram Patwari had taken any part in the election or distributed any parchis. There was absolutely no ring of truth while he was being examined by the Tribunal. He was prevaricating and giving evasive answers and the Tribunal had to record his demeanour in the following terms:—

"The witness gave evasive answers to all the questions put by the Tribunal. Some of the questions were explained to him both in English as well as in Hindi several times but he would not give a straight answer. He pretended as if he did not understand the question. He asked the Tribunal to translate "How could I complain to others as I myself was a Government servant?" It was translated in Hindustani. Then, he himself admitted that he understood the question in English."

He was examined by the Collector on 4-3-1954, but changed his front on 6-4-54 before this Tribunal. It is patently clear that such a witness, who gave a different version before the Deputy Commissioner, on oath, cannot be relied upon. It is regrettable that Shiv Ram P.W. 10 who holds a responsible position as Headmaster of a primary school and who is a matriculate should have scant regard for truth.

P. W. 11, Nanak Chand, states that a fortnight before the last election, Dila Ram Patwari came to him with parchis like Ex.P. 2 and states that the parchis were of Hira Singh Pal and the vote should be cast in his favour as he is an educated person. He further states that Hari Das was a man of loose character. In his cross-examination, he admits that he is a fouranna member of the Congress and did not think it necessary to keep that parchi. He states that he mentioned this fact to Dr. Parmar and showed him the parchi and was asked by Dr. Sahib to keep it. Dr. Parmar has not been produced to corroborate this witness. This witness was also recalled on 16-7-1954 and was confronted with his statement in the departmental inquiry Exhibit C. 2. He deposes, "Statement dated 5-3-1954 of which Exhibit C. 2. is a copy has been read over to me. It is correct except the portion marked A to A. (I do not know Patwari Dila Ram)." In his statement before the Collector, Mahasu, on 5-3-1954, this witness stated, on oath, "I do not know Patwari Dila Ram and I cannot identify his handwriting." When questioned by the Tribunal this witness stated, "When I was called to give evidence before Thakur Raghubir Singh, Collector, Mahasu, Dila Ram Patwari was present in Court. When my evidence was recorded, I knew that an inquiry was being held against Dila Ram Patwari. Whatever statement I made

on 6-4-1954 before this Tribunal was not stated by me before the Collector and *vice versa*." It appears that this witness has not the slightest regard for truth. It is inconceivable that during the departmental inquiry, when he was making the statement and Dila Ram Patwari was present in Court room, he states that he did not know Dila Ram Patwari, but now before the Tribunal one month after this statement *i. e.* on 6-4-1954, he should take a somersault and have the courage to say that Dila Ram Patwari came to him with parchis like Exhibit P. 2. The witness is utterly unreliable and no credence can be given to his testimony.

Nanak Chand, P. W. 11 belongs to village Rampur and he stated that Dila Ram Patwari came to him at Rampur. As held previously this evidence is not legally admissible because Rampur is not included in Chandi Patwar Halqa.

Similarly, Sant Ram, P. W. 12, belongs to Rampur and his evidence is legally inadmissible. However, I proceed to consider the evidence on merits. This witness states that Dila Ram came to him with a parchi like Ex. P. 2 and recommended the name of respondent No. 1. In cross-examination, he admitted that he still possessed that parchi, which bore his name as well as voters number. He further stated that after the election was over, he verbally brought the matter to the notice of Dr. Parmar, who has not been produced. He showed this parchi to Dr. Parmar, who advised him to preserve the parchi. The witness was directed by the Tribunal to bring the parchi at the next hearing. On 19th May, 1954, he produced the parchi Ex. P. W. 12/A.

On 21st May, 1954, the office made a report to the effect that Sant Ram P. W. 12 was not a voter. The detailed report is as follows:—

"Sant Ram s/o Kanshi Ram, resident of village Rampur (Ex. P. W. 12/A) voter No. 168, Solan Constituency is not in the list of voters. Another Sant Ram s/o Hariman voter No. 168 belongs to Sua village, Tehsil Solan is in the list pertaining to the year 1950-51.

2. So far the list of voters for the year 1951-52 against serial No. 168, is Lachmi Ram s/o Mansa Ram instead of Sant Ram s/o Kanshi Ram, as pointed out in para 1."

The Tribunal passed the following orders:—  
"Learned Counsel for the petitioner may see this and put down what he has to say". No explanation was submitted by the petitioner's learned counsel.

At the time of argument, Ex. P. W. 12/A was minutely examined with the aid of

magnifying glass and attention of learned counsel for both the parties was drawn to the over writing and tampering of the document. The traces of forgery were apparent to the naked eye. The Tribunal came to the conclusion that the voter's number was originally 158 and 5 had been converted into 6. Similarly, the voter's name as originally written, was Nanak Chand and this had been converted into "Sant Samdu". In the electoral roll of 1951-52 voter No. 168 is one Lachmi Ram and voter No. 158 is Nanak Chand. This electoral roll was prepared for the bye-election. In the electoral roll of 1950-51, which was prepared for the general election voter No. 168 is Sant Ram. It appears that Sant Ram P. W. in order to strengthen his evidence has caused to be produced in court before the Tribunal forged document, wherein Sant Ram's name does not appear and Nanak Chand has been converted into Sant Samadu. In view of the following facts, I hold that the evidence of this witness is untrustworthy and cannot be relied upon:—

- (i) He belongs to village Rampur which is not in Patwar Halqa Chandi and the petitioner had to confine himself to the evidence of canvassing in Patwar Halqa Chandi alone.
- (ii) There is no corroboration of his statement.
- (iii) Dr. Parmar, Chief Minister, Himachal Pradesh, was an important witness and to whom complaint had been made and parchi shown should have been examined by the petitioner as a witness.
- (iv) That no one was present when this parchi was given. Hence, witness's statement cannot be subjected to searching cross-examination and scrutiny.
- (v) Parchi is not in the handwriting of Patwari Dila Ram.
- (vi) Parchi Ex. P. W. 12/A is tampered with and clearly appears to be a forgery.

P. W. 28, Dharam Das, also belongs to Rampur and for the reasons stated above his evidence is not legally admissible. As he has been examined as witness, I deem it necessary to consider his evidence on merits. He states that 10 or 15 days before the election, Dila Ram Patwari gave him 8 or 10 parchis of the type of Ex. P. W. 12/A for distribution amongst villagers and that he distributed them accordingly. The following facts were elicited in his cross-examination by the respondent's counsel:—

- (i) None else was present at the time when these parchis were handed over to him.

- (ii) The patwari did not know him before.
- (iii) Patwari did not pay anything for this purpose.
- (iv) The witness is not a voter although one parchi was given to him.
- (v) That he distributed the parchis to Kanshi Ram, Malti, Durga Datt, Chamele, Kanaku, Gandharbu and Krishan Datt.
- (vi) The witness did not complain about this matter to any one.

It is remarkable that not a single witness has been produced out of the seven persons mentioned above to whom parchis were distributed. There is absolutely no corroboration of his statement. The evidence seems to be unnatural, specially when Dila Ram Patwari was new to the place and asked a stranger to distribute parchis in Rampur, which was not in his Patwar circle. I cannot place any reliance on the evidence of this witness.

In rebuttal, the respondent has produced Dila Ram Patwari as R. W. 12. He denies having canvassed support for Hira Singh Pal in the bye-election and the distribution of parchis for Sri Pal. The witness was shown the parchis and says that none of these entries was in his handwriting. He further deposes that he joined this Chandi patwar circle in the end of February 1953 and was confined to bed for about a month. Before that he had not been posted to Chandi. Hence, he did not know the people of the Illaqa. The witness was suspended on the forenoon of the day when the poll was taken i.e. on 19-7-1953. He was served with the charge sheet on 10-9-1953 that he was taking active part in the politics. There is no mention in that charge about his rendering assistance to respondent No. 1 or any candidate. Witness was examined in the departmental inquiry on 5-3-1954, i.e. two days after the election Tribunal started hearing the present election petition. On 22-7-1953, Dila Ram made a statement in the departmental inquiry which is contained at page 69 of the departmental file. In that statement, he submitted that from the charge-sheet it was not clear as to why he was suspended and what were his political activities for which he was suspended. He further submitted that he was new to the Illaqa and had no acquaintance with the public. He pleaded his innocence with all the vehemence at his command and prayed for his reinstatement. R. W. 9, Devi Ram, states, on oath that he distributed parchis in the villages of Thimbar, Bhamot, and Rampur. Sant Ram shop-keeper (P.W.) of Rampur was offered a parchi, but he refused. The parchis were distributed at the house of Shakat Ram. R. W. 5, Shakat Ram, corroborates him in this respect. Hira Singh Pal, as R. W. 13, states

that he never asked Dila Ram Patwari for any help in the bye-election and in fact Dila Ram Patwari did not render any help to him.

There is absolutely no evidence to show that Hira Singh Pal or any of his agent asked Dila Ram Patwari to work for him. It is necessary that there should be some evidence of "procuring or obtaining assistance". Considering the unsatisfactory nature of the evidence on record, led by the petitioner, I find that the issue with regard to alleged assistance rendered by Dila Ram Patwari is not proved.

*Devi Datt Vaid Kullahriwala.* It is alleged in list 'B' paragraph 5 that, "Devi Datt, Vaid, incharge Kullahriwalla dispensary, in pargana Doon at the request of Sri Hira Singh and his agent Gita Ram did propaganda in the dispensary and in the village for Sri Hira Singh for about two weeks before the election." In support of this issue, solitary witness P. W. 27 Nathu Ram, has been examined. The witness states that about 15 or 20 days before the bye-election, he happened to go to the dispensary for medicine and was asked by the Vaid to vote for Sri Pal who was considered to be a good man. In his cross-examination, he admits that he was the Secretary of Congress Committee, Doon, from 1948-1950 and was polling-agent of Hari Das, petitioner, in the bye election. The witness brought this matter to the notice of the Chief Minister and made the complaint orally. After this complaint, he was appointed as polling-agent. In rebuttal, R. W. 8, Devi Datt, has been produced who denies the above mentioned allegations. He explains that Nathu Ram, P. W., had abused his chaprasi and an inquiry regarding the same was entrusted to him and on that Nathu Ram threatened him with dire consequences. There is no corroboration of the statement of Nathu Ram, P. W. 27. He was polling-agent of Hari Das in the bye election and Secretary, Congress Committee, he is highly interested in the petitioner. Although he made a complaint to the Chief Minister but he had not been examined as a witness to corroborate him. His evidence is contradicted by R. W. 8, Devi Datt. There is no evidence that respondent No. 1 or his agents asked Devi Datt to canvass votes for him. Moreover, Devi Datt being a Government servant will not ask Congress Secretary to vote for Socialist candidate.

I hold that this part of the issue relating to Devi Datt Vaid has not been proved, and I decide it against the petitioner.

*Gurdayal Singh.* No evidence has been led with regard to the alleged assistance by Gurdayal Singh Patwari of Patta and the learned counsel for the petitioner did not argue this matter.



*Nanak, Lambardar of village Madhala.* P. W. 27, Nathu Ram, states that Nanak, Lambardar of Madhala, came to his house and solicited vote for Sri Hira Singh Pal. There is no corroboration of this evidence. It is unnatural to expect Nanak Chand Lambardar or Devi Datt Vaid to canvass Nathu Ram, P. W. 27, for vote in favour of a Socialist candidate, when he was Secretary of the Congress Committee and polling-agent of Hari Das, petitioner. There being no reliable evidence on this point, the issue is decided against the petitioner.

### ISSUE No. 3

Although this issue was not pressed by learned counsel for the petitioner, I deem it necessary to give my finding on this matter. The particulars with regard to this issue are contained in list 'C' which run as follows:— "That Sri Hira Singh Pal issued posters, handbills and chits in which an appeal to vote for him was made. The name and address of the printer and publisher did not appear on them." Section 125 (3) lays down that following shall be deemed to be illegal practices for the purpose of this Act:—

"The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof."

P. Ws. 3, 5, 9, 11 and 12 have produced some parchis, which do not bear on the face of it the name of the printer and the press. R. W. 2, Uttam Chand, Manager, Printing Service Company, was examined as a witness and produced Ex. R. 2 and R. 3, samples of the parchis. He states that Ex. R. 2 was printed to the extent of 30,000 and Ex. R. 3 in the number of 6,000. He gives the explanation that it is possible that the name of the printing press may have been omitted while cutting or printing. The explanation seems to be plausible. The petitioner had to show under section 100 (2) (a) of the Representation of People Act, 1951, "that the election of the returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice." As stated above, omission of the name of the press is an illegal practice in clause (3) of section 125 of the Act. The petitioner had to prove that the result of the election was materially affected by omission of the name of the press on parchis produced before the Tribunal. As deposed by the Printer, R. W. 2, the number of the parchis printed was about 36,000. Even if it be taken for granted that few parchis did not bear the name of the press, it does not materially affect the result of the election. More so, when the return of the election expenses is far below the maximum prescribed by the rules under the Representation of People Act.

### ISSUES 4 AND 5

These issues were also not pressed by the learned counsel for the petitioner. The particulars with regard to return of election expenses are contained in list 'D'. Under section 123 (7) of the Representation of People Act, it is a major corrupt practice to incur expenditure beyond the prescribed limit. In that case election has to be set aside automatically. No such allegations are made in the petition. Issues Nos. 4 and 5 are confined to election expenses being incorrect. This allegation, if proved, would constitute a minor corrupt practice as contemplated by section 124 of the Act. In such a case, it has to be proved that it was done with a corrupt motive, i. e. with a view to avoid the total return of expenses from exceeding the prescribed limit. The total expenses incurred by respondent No. 1, according to his return, amounts to 454, while the maximum limit in a double member constituency, as stated at the Bar, is Rs. 4,000. No evidence has been led to show that any item of expenditure shown in the return of election expenses is incorrect or it has materially affected the result of the election. Accordingly I find the issues against the petitioner.

### ISSUE No. 6

The allegation regarding this issue are contained in paragraph 6 (a) of the petition and are as follows:—

"On the polling day and at each and every polling station respondent No. 1, his agents and other persons with his and his agent's connivance gave to the electors printed chits, with particulars of name address and elector number filled in, bearing the symbol of hut allotted to respondent No. 1 and an appeal to vote for him. such chits were allowed to be taken right to the polling booths and the electors with the help of the chits could easily pick out the ballot box of respondent No. 1 to drop the ballot papers therein." Two witnesses have been examined in support of this issue. P. W. 3, Mani Ram, Jamadar, Tehsil Arki, states that he saw slip like Ex. P. 2 in the hands of 10 or 20 voters. On inquiry from the voters, he came to know that they were being distributed by Hira Singh's agent in the maidan at a distance of 20 or 25 yards from the polling booth. In cross-examination, he admits that he did not bring this matter to the notice of the presiding officer, nor can he mention the name of 10 or 20 voters in whose possession he saw those parchis. Similarly, P. W. 5, Bali Ram, states that he saw 2 or 3 persons distributing amongst the voters slips like Ex. P. 2 at a distance of 20 or 30 yards from the polling booth. The witness did not report this matter to any body. The evidence on the face of it is very

unsatisfactory. Full arrangements are made at the polling station by the presiding officer that there should be no canvassing within 100 yards of the polling station. If such a thing had happened, the presiding officer would have come to know about it and would have prosecuted the offenders. Section 130 of the Representation of People Act, 1951, makes it an offence punishable with fine which may extend to Rs. 250, if any person canvasses for votes within 100 yards of the polling station. Moreover, this is a cognizable offence and police would have taken immediate action. The evidence does not strike me as credible and I do not rely upon the same. Even if it be admitted that some parchis were distributed within 100 yards of the polling booth, the petitioner has to show under section 110 (2) (c) that the result of election has been materially affected by non-compliance with the provisions of this Act. Hari Das, petitioner, in his statement as P.W.2, states that he secured 2,900 votes in the bye-election and Sri Hira Singh Pal got more than 5,000 votes. Even if 10 or 20 persons were canvassed within 100 yards, the result of the election would not be materially affected. I hold that this issue has not been proved and is decided against the petitioner.

#### ISSUE No. 7

The petitioner alleges that respondent No. 2, Ram Das, failed to keep and maintain regular books of account and to enter particulars of expenditure in the prescribed manner. It may be noted that the petitioner in his petition does not challenge the election of respondent No. 2. He has not led any evidence to show that respondent No. 2 failed to keep regular accounts or that his return of election expenditure was false in material particulars. This issue was not pressed by the learned counsel for the petitioner. I find that there is no evidence to substantiate the allegation in this respect and I decide the issue against the petitioner.

In the result, the petition fails and is hereby dismissed. Considering the fact that the petitioner has already paid Rs.25 as costs at an intermediary stage of the trial, I direct him to pay (one hundred) Rs. 100 more as costs to respondent No. 1. I leave the other parties to bear their own costs.

DAULAT RAM PREM,  
Senior Advocate,  
Member, Election Tribunal,  
Himachal Pradesh.

## BEFORE THE ELECTION TRIBUNAL, HIMACHAL PRADESH AT SIMLA

[ ELECTION PETITION No. 22 OF 1953 ]

HARI DAS son of Sri Guasaon  
Ram, village Hatkot, Kunihar. . *Petitioner*

*Versus*

1. HIRA SINGH PAL son of  
Parshotam Ram, village  
Domehar, Arki.
2. RAM DASS son of Sri  
Jairam Dass, alias Jagan  
Dass, village Harth, Salogra,  
Solan.
3. RUP RAM son of Sri Barru  
Ram, village Hatkot,  
Kunihar ... .. *Respondents*

*Appearances*

SARVASRI K. C. PANDIT and M. L.  
AUKTA *Advocates for the petitioner.*

SRI TEK CHAND CHITKARA *Advocate for  
respondent No. 1.*

SRI RAM DAS, *respondent No. 2, in person.*

SRI RUP RAM, *respondent No. 3, ex-parte.*

### JUDGMENT

(PER CHAIRMAN, SRI T. RAMABHADHAN I.C.S.)

I have had the advantage of seeing the judgment written by my learned colleague, Mr. D. R. Prem, Advocate. While I am in general agreement with the findings arrived at by him and the order proposed to be passed, I am unable to endorse some of his observations, which, to my mind, were uncalled for. I, therefore, think it proper to record a separate judgment.

This election petition arises out of a bye-election from Solan Constituency to the Himachal Pradesh State Legislative Assembly held on 19th July 1953. It was a double member constituency, one seat being reserved for a member of the scheduled caste. The election was contested by the petitioner, Sri Hari Das, as well as by the three respondents, Sarvasri Hira Singh, Ram Das and Rup Ram. Respondents 1 and 2 were declared duly elected. The present election petition was presented to the Election Commission at New Delhi by the petitioner on 30th September 1953. In brief, the petitioner impugned the election of the respondent No. 1 on the following grounds :—

- (a) that he and his agents published false statements in relation to the petitioner's character and conduct, as were reasonably calculated to prejudice his election.

- (b) that he and his agents obtained the assistance of persons serving under the Himachal Pradesh Government to support his election.

The election was assailed on other grounds also, e. g., that the respondent No. 1 published and circulated hand-bills and printed chits, not bearing on their face, the name and address of the press where they were printed, (referred to in issues 3 to 7 framed by the Tribunal), but it is not necessary to discuss them as they were not pressed.

A preliminary objection had been taken by respondent No. 1 to the effect that particulars of corrupt or illegal practices, referred to in the petition and enumerated in lists 'A', 'B' and 'C', attached to the petition, were not sufficiently detailed. The petitioner was allowed to furnish better particulars thereof and to verify the same on payment of costs as provided in section 83(3) of the Representation of People Act, 1951. No further discussion on this point appears to be necessary.

Coming to the false statements, alleged to have been published by respondent No. 1, in relation to the petitioner's personal character or conduct, the allegations are :- firstly, that Sri Hira Singh, respondent No. 1, for a period of about twenty days, preceding the date of poll, carried on propaganda among voters of the labour class, employed on the construction of the Arki Kunihar road, that the labourers were being paid only Rs. 50 p. m. as against their actual salary of Rs. 60 p. m., and the balance of Rs. 10 was being misappropriated by the petitioner, Hari Das, and the Ministers. The evidence on this point consists of the statements of Prem Chand (P. W. 16), Padam Singh supervisor (P. W. 17), Chet Ram, mate, (P. W. 20) Jamna Dass mate (P. W. 21) and of the petitioner himself. Prem Chand's statement is that he was employed as a mate on the Kunihar-Arki road in the months of June and July 1953. Padam Singh (P. W. 17) was the supervisor. It is alleged that Hira Singh came there and told him (Prem Chand) and Chet Ram (P. W. 20) that their salary as sanctioned by the Government, was Rs. 60 p. m., but they were being paid only Rs. 50 p. m. and the balance of Rs. 10 was being misappropriated by Hari Das, petitioner, and the P. W. D. Minister. Prem Chand brought the matter to the notice of his supervisor, Padam Singh (P. W. 17) who assured him that there was no truth in the allegation. It is significant that, according to the particulars of corrupt practices given in list 'A' appended to the petition, the alleged conversation was with reference to the pay of coolies and not mates. The other two witnesses, Chet Ram and Jamna Dass P. Ws. 20 and 21, respectively, stated that the talk was with reference to the pay of coolies and

not of mates. The statement of the petitioner is that Padam Singh, supervisor, informed him that certain mates had complained to him that a part of the pay of the labourers was being misappropriated by him (the petitioner) and the P. W. D. Minister. It is thus manifest that two different versions being given by two sets of witnesses. According to the first set, it was a part of the mates' pay that was being embezzled and according to the second set, a part of the pay of the coolies. It is also significant that, as admitted by Chet Ram and Jamna Dass, a mate used to get only Rs. 56/4/- p. m. It is therefore, difficult to conceive that Sri Hira Singh Pal would go and tell the mates that they were receiving only Rs. 50 p. m., while admittedly, they were in receipt of Rs. 56/4/- p. m. It is also strange that no attempt was made to produce a coolie to prove that Sri Hira Singh made false statements to them with reference to the personal character and conduct of the petitioner. It may also not be out of place to point out that Padam Singh (P. W. 17), road supervisor, would have us believe that he sent a written complaint to the Executive Engineer and the Minister P. W. D. regarding the false propaganda made by Sri Hira Singh. No attempt was made by the petitioner to summon this complaint from the office of the executive engineer or of the P. W. D. Minister. Learned counsel for the respondent also pointed out that, on his own showing, Padam Singh was the agent of Hari Das, petitioner, in the previous election and had been appointed by the Congress party to work for its candidate. After the election was over, he was appointed as a P. W. D. supervisor. It was not at all favourably impressed by the evidence produced by the petitioner on this point. Sri Hira Singh Pal has denied, on oath that he told the labourers working on the Arki-Kunihar road that the petitioner was misappropriating Rs. 10 out of the salary of each labourer. The burden of proving this issue lay on the petitioner and, in my opinion, he failed to discharge that onus.

The other false statement attributed to the respondent is that, on the eve of the election, he and his agents openly exhorted people not to vote for the petitioner, as he had ceased to be a Hindu. The evidence on this point consists of the statements of Jagat Bhaskar (P. W. 14), Chet Ram (P. W. 15) and Chajju Ram (P. W. 25). Jagat Bhaskar's statement is that in the beginning of July 1953, Sri Hira Singh came to his house and told him that Sri Hari Das had married a Muslim woman and had become a Muslim by faith and he (the witness) should not vote for him. A similar statement was made by P. W. 15, Chet Ram and P. W. 25, Chajju Ram. In the course of his statement, the petitioner deposed that Sri Hira Singh and his agents, Dhani Ram and

Hari Ram, carried on propaganda against him to the effect that he (the petitioner) had ceased to be a Hindu and had become a Muslim and that to vote for him was to spread Islam. As far as Jagat Bhaskar's statement is concerned, he admitted in cross-examination that he told Keshab Ram, Secretary of the Tehsil Congress Committee, what the respondent No. 1 told him. It is, however, significant that when Keshab Ram appeared as P. W. 23 he was not questioned on this point. P. W. 15, Chet Ram, admitted in cross-examination that no one was present at his shop when the respondent came and told him that Sri Hari Das had kept a Muslim woman as a mistress, nor did he mention it to any one else in the village. How under such circumstances, the petitioner cited Chet Ram as a witness on this point remains a mystery. Similarly, it is difficult to believe that Dhani Ram and Hari Ram agents of Sri Hira Singh Pal, who was a candidate for the Socialist party would go to Chajju Ram, P. W. 25, who was Secretary, Congress Committee, Kunihar, and tell him that Hari Das was not a desirable person. The oral evidence on this point, therefore, does not inspire confidence. It is also significant that Chajju Ram issued a leaflet, Ex. R. 1, warning the public against Hira Singh Pal. Finally, out of the two persons, Sham Lal Bhandari and Sita Ram, said to have been present in his shop, when Dhani Ram and Hari Ram came there, Sita Ram was not produced, while Sham Lal Bhandari was given up.

In rebuttal, Hari Ram (R. W. 10) denied having carried on propaganda against the petitioner to the effect that he had kept a Muslim woman. Narotam (R. W. 4) stated that Sri Pal did not visit Chet Ram's shop. The respondent No. 1 in his statement denied having carried on any propaganda against the petitioner as alleged.

Even if we assume, for a minute, that such statements were published by the respondent's agents, they cannot be held to be false. It was admitted by the petitioner that a Muslim woman, named Mt. Barkate, had been living in his house since 1947. In the previous election petition, petitioner had stated that Nabi Baksh, husband of Mt. Barkate, was about 47 years of age and his wife, Mt. Barkate, was about 15 years younger to him. Petitioner has, no doubt, made an attempt to show that Mt. Barkate is advanced in age, but, read along with his previous statement, she would appear to be about 35 years of age. It is further admitted that she used to cook food for the petitioner and his wife, while the latter was ill. Under such circumstances, even if a statement of the nature complained of had been made, it would not be necessarily false and, therefore, would not come within the mischief of section 123 (5) of the Representation of People Act, 1951.

That brings me to the other material issue in this proceeding, namely, whether the respondent No. 1, his agents or other persons with their connivance obtained and procured the assistance of persons serving under the Himachal Pradesh Government for the furtherance of his election prospects. In list 'B' appended to the petition, reference has been made to activities of Hari Ram Lambardar of village Toru, Dila Ram Patwari of Chandi, Gurdayal Patwari of Patta, Nanak Lambardar of village Mdhala and Devi Datt Vaid, in charge of Kullariwala dispensary.

The allegation against Hari Ram is that he was paid Rs. 50 by Sri Hira Singh Pal to work for him and, accordingly, for about a week preceding 8th July 1953, he worked for him in Dhundan area. The allegation is denied by the respondent. The evidence on this point consists of the statements of Atma Ram (P. W. 1), Hari Ram (P. W. 2), Sri Durg Das, Tehsildar (P. W. 6), Sudama Ram (P. W. 8), Sri Moti Sagar, Pleader, Arki (P. W. 18), Brij Lal (P. W. 19), Achra Ram (P. W. 22), Keshab Ram (P. W. 23), and Swanru (P. W. 26). The statement of Atma Ram (P. W. 1) is to the effect that some 15 days prior to the date of poll, Hari Ram Lambardar, came to his hotel and canvassed for Hira Singh saying that he was his own man. Sudama Ram and Achra Ram were also present there. In cross-examination, Atma Ram admitted that it was Achra Ram, who opened the topic by inquiring from the Lambardar in whose favour he should cast his vote. It was in reply to that query that the Lambardar stated that Hira Singh was his own man. Admittedly, no other talk took place. Atma Ram further admits that both Sudama Ram and Achra Ram were canvassing for Hari Das. Achra Ram (P. W. 22) supports Atma Ram on this point, i. e. he admits that it was he who enquired from the Lambardar in whose favour he should cast his vote. Sudama Ram (P. W. 8) also supports this version. I may point out that under section 123 (8) of the Representation of People Act, it is the obtaining or procuring, by a candidate or his agent or by any other person with their connivance, of any assistance, for the furtherance of the candidate's election prospects from a Government servant, that constitutes a major corrupt practice. Thus, if P. W. 22, Achra Ram, enquired from the Lambardar in whose favour he should cast his vote and the latter replied that Hira Singh was his man, it would not amount to a corrupt practice within the meaning of section 123 (8). Apart from this witness, Achra Ram, appears to have scant regard for speaking the truth. When his statement was recorded on 19th May 1954, he categorically denied having worked as Hari Das's polling agent during the General Election of 1953. He was recalled on 23rd August 1954 and confronted with his statement dated 5th September 1952 before the previous Election Tribunal wherein he admitted

having worked as polling-agent for Hari Das at Dhundan. Achra Ram took refuge behind the plea that he did not remember whether he had stated so. Subsequently, he added that he might have stated so, on the previous occasion, inadvertently. It is obvious, therefore, that very little reliance can be placed on his testimony. Sudama Ram (P. W. 8) failed, significantly enough, to state before the Tehsildar at Arki during the departmental inquiry against Hari Ram Lambardar that he had canvassed for Hira Singh. Nor did he mention this to other persons in the village. Consequently, his statement has to be liberally discounted. It may not be out of place to point out that there is no evidence either to show that Hira Singh had asked Hari Ram Lambardar to recommend his name.

Hari Ram ex-Lambardar has examined by the petitioner as P. W. 2. His statement is that apart from bringing and arranging furniture to be placed on the polling-booth (which he did at the instance of the Patwari), he did not do other work in connection with election. He pleads ignorance as to why he has been removed from his office. He denies that he had worked for Hira Singh. It is true that the Lambardar filed an affidavit Ex. P.1 on 18-8-1953, which was attested by Sri Moti Sagar, Oath Commissioner, Arki (P. W. 18), the affidavit is to the effect that he had received Rs. 50 from Hira Singh, respondent No. 1, for doing propaganda for him and that at the instance of Sri Hira Singh, he carried on propaganda to the effect that the petitioner had kept a Muslim woman, had ceased to be a Hindu and to vote for him was to propagate Islam. In case Hari Ram had stuck to this affidavit, it would have supported the petitioner's case considerably. Hari Ram, however, while admitting having signed, Ex. P.1, at three places, states that he merely intended to get an application written seeking information as to why he had been suspended. He would have us believe that he did not know what Brij Lal actually wrote upon it and he took it to the Tehsil under the impression that it was an application protesting against his suspension. He further denies that the Oath Commissioner, Sri Moti Sagar, read out the contents of the affidavit before he (Hari Ram) signed it. From the statements of Brij Lal, petition writer, (P. W. 19) and of Sri Moti Sagar, pleader, (P. W. 18), however, it would appear that the affidavit was written on the lines indicated by the Lambardar and the contents were explained to him before he executed it. At the same time, the affidavit contains intrinsic evidence that it was obtained from the Lambardar by interested persons to serve their ulterior purpose. For instance, the affidavit is to the effect that Hira Singh Pal, respondent No. 1, paid Rs. 50 to the Lambardar Hari Ram as a reward for doing propaganda for him and for distributing parchis to the voters. In the second place, it contains a

recital that the deponent worked for Sri Hira Singh Pal, respondent No. 1. In the third place, it contains a reference to propaganda done on behalf of Sri Pal to the effect that Sri Hari Das had kept a Muslim woman and had ceased to be a Hindu. Keshab Ram (P. W. 23), Secretary, Congress Committee, Arki, admitted that the affidavit was brought to him by Hari Ram Lambardar and he (Keshab Ram) kept it with a view to pass it on to Hari Das, petitioner, who was General Secretary of the Congress Committee Arki. Subsequently, he gave the affidavit to Hari Das. Sri Hari Das admitted that the affidavit was in his possession, when he got the election petition drafted. Learned counsel for the respondent No. 1 argued and, in my opinion not without justification, that in case Hari Ram Lambardar wished to apologize to the authorities for his misconduct, a brief straightforward application would have been sufficient i.e. it was hardly necessary for him to refer to the payment of Rs. 50 by Hira Singh or to the propaganda that the petitioner was keeping a Muslim woman and had ceased to be a Hindu. It is not without significance that these are the main pillars on which the petitioner's case rests. It is also noteworthy that, instead of writing out an apology on plain paper, Hari Ram executed an affidavit on a stamped paper worth Rs. 2 and that too was not addressed to any Court or Revenue Officer or any other authority. It is also a relevant circumstance that the affidavit was handed over to Keshab Ram, Congress Secretary, who, in his turn, made it over to Hari Das, petitioner, and the latter filed it before this Tribunal in support of his case. All these circumstances lend considerable support to the contention of the learned counsel for respondent No. 1 that the affidavit was the result of some manipulation i.e. it appears that by means of this affidavit, evidence was being created, even at that time, to support a possible election petition in the future. In case, Hari Ram had stuck to the affidavit, it would have materially supported the petitioner's case. As it is, Hari Ram has disowned the affidavit with the result that it can be used only for the purpose of contradicting him, or showing that he is an unreliable witness. It certainly cannot be used as substantive evidence against the respondent who had no opportunity of cross examining the deponent. Thus, the affidavit will not help the petitioner in proving his allegations that the respondent, Hira Singh Pal, had paid a sum of Rs. 50 to Hari Ram Lambardar as consideration for working for him and further that the latter, in pursuance thereof, distributed parchis to the voters and carried on propaganda that the petitioner was keeping a Muslim woman and had ceased to be a Hindu.

I might, at this stage, make a reference to the departmental inquiry conducted against Hari Ram Lambardar by Sri Durga Das (P. W. 6),



Tehsildar. During the course of that inquiry, he recorded the statement of Hari Ram, on 28-12-53 who admitted that he had done some propaganda for Hira Singh Pal, but pleaded that he had done so due to ignorance and prayed for pardon. Before the Tribunal, Hari Ram stated that he was merely asked if he had done any work in connection with the polling. He had brought and arranged furniture in the polling booth at the instance of the Patwari. He was under the impression that this was what the Tehsildar's question referred to and therefore, he admitted having done that work. He denied having canvassed for Sri Pal. There is no reason however to disbelieve the Tehsildar on this point. Hari Ram, obviously, cannot be believed. Nor can his explanation be accepted. The fact, however, remains that his statement, Ex. P.3 which was not on oath--to the Tehsildar cannot be treated as a substantive piece of evidence against the respondent, who had no opportunity of cross-examining him then and could be used only for the purpose of contradicting the witness.

As against this, the respondent, Hira Singh Pal, has denied, on oath, having paid any money to Hari Ram Lambardar, or requested him to do propaganda on his behalf. Kashmiri Lal (R. W. 6) stated that although he lived in Hari Ram's jurisdiction and they used to meet daily, the latter never canvassed for votes.

Under these circumstances, the allegation that Hari Ram Lambardar worked for the respondent, Hira Singh Pal, is not proved.

The other Government servant, who is stated to have worked for respondent, is Dila Ram Patwari of Chandi. The allegation is that, for about three weeks prior to the date of polling, he did extensive propaganda for Sri Hira Singh Pal in Chandi Patwar Halqa by distributing hand-bills and chits pertaining to the respondent. The evidence on this point consists in the statements of Brij Lal (P. W. 9), Shiv Ram (P. W. 10) Nanak Chand (P. W. 11), Sant Ram (P. W. 12) and Dharam Das (P. W. 28). Brij Lal (P. W. 9), is employed at Mahu (Madhya Bharat). He has got a grocery shop in village Chandi. He was on leave at Chandi from 25th May to 25th July 1953. His statement is that Dila Ram Patwari recommended the name of Hira Singh Pal and gave him a slip similar to Ex. P. 2. He gave a similar parchi to Shiv Ram with a similar recommendation in favour of Hira Singh. Brij Lal, however, admitted, in cross-examination, that he was not a voter and none else was present at his shop on this occasion. Admittedly, he did not preserve the parchi, which was given to him. It is also difficult to believe that the Patwari would have given the parchi to him despite

being told that he (Brij Lal) was not a voter. It is also significant that Brij Lal did not mention what had happened to any one in the village. He would us have believe that subsequently he mentioned the matter to some one in the village, whose name he does not know. Admittedly, no report was made to any official, although it is not disputed that Ministers, the Tehsildar and some officials did come to this village. This witness hardly inspires confidence.

Coming to Shiv Ram (P. W. 10), his statement is that 3 or 4 days before the poll took place, Dila Ram met him at Brij Lal's shop, gave him a parchi similar to Ex. P. 2 and suggested that he should vote for Hira Singh Pal. This witness is belied by his own statement made to the Deputy Commissioner, Mahasu, on 4-3-1954 during the departmental inquiry against Dila Ram Patwari, Ex. C. 1. There, he had stated that he did not know whether Dila Ram Patwari took any part in the election or not and whether he had distributed any parchis. Confronted with the earlier statement, this witness gave a lame explanation to the effect that by the expression 'taking part in the election', he understood doing propaganda on the date of polling and not earlier. This witness created a most unsatisfactory impression on the Tribunal and a note regarding his demeanour has been made on the record. His statement, therefore, must be discarded.

That brings us to the statement of Nanak Chand (P. W. 11) which is to the effect that about a fortnight before the bye-election, Dila Ram Patwari came to him with a parchi similar to Ex. P. 2 and recommended that he should vote for Hira Singh Pal as he was an educated man, while Hari Das was a loose character. In cross-examination, Nanak Chand admitted that he showed the parchi to Dr. Parmar at Rampur a few days before the date of poll. Dr. Parmar asked him to make a complaint in writing, but witness did not do so. The reason given is that the Doctor Sahib left the place soon afterwards. This witness is belied by his own statement made to the Deputy Commissioner, Mahasu, on 5-3-1954 (Ex. C. 2), where he stated clearly that he did not know Dila Ram Patwari. Admittedly, the Patwari was present in the Deputy Commissioner's court-room, while Nanak Chand's statement was being recorded by the Deputy Commissioner. Obviously this witness has scant regard for the truth and no reliance can be placed on his statement.

The statement of Sant Ram (P. W. 12), of Rampur, is to the effect that towards the end of June 1953, Dila Ram Patwari came to him with a parchi like Ex. P. 2 and recommended the name of Hira Singh. He claimed that the

parchi was still in his possession and that he brought the matter verbally to the notice of Dr. Parmar soon after the election. Dr. Parmar was not produced as a witness in this case. In case, Dr. Parmar had been produced as a witness and he had corroborated the statements of Nanak Chand and Sant Ram, the petitioner's case would have been considerably strengthened. The Tribunal called upon Sant Ram to bring the parchi, and in accordance with that direction Sant Ram produced parchi, Ex. P. W. 12/A. Even to the naked eye, the parchi, Ex. P. W. 12/A bears signs of having been tampered with. It appears that the voter's number, as originally written there, was 158. The digit 5 appears to have been converted into 6. Similarly, the voter's name was originally put down as Nanak Chand and this appears to have been converted into Sant Samadu. On 21st May 1954, i. e., two days after this parchi was produced before the Tribunal, the office had put up a report to the effect that Sant Ram (P. W. 12) was not a voter and that another Sant Ram son of Hariman of village Sua was a voter in the year 1950-51. In the list of voters 1951-52, serial number 168 related to one Lachi Ram son of Mansa Ram. There appears to be considerable force in the argument of the learned counsel for the respondent that, in order to corroborate his statement, Sant Ram produced before the Tribunal a forged document.

There now remains only the statement of Dharam Das (P. W. 28) of Rampur, which is to the effect that about 10 or 15 days prior to the election, Dila Ram Patwari gave him 8 or 10 parchis similar to Ex. P. W. 12/A, which, he distributed among the villagers. It is not possible to rely on this statement for the following reasons. Admittedly, Dharam Das does not live within the jurisdiction of Dila Ram Patwari. Nor was he known to the Patwari since previously. Nevertheless, I am asked to believe that Dila Ram Patwari took him from Chandi bazar to the Patwarkhana and gave him the parchis with the request to distribute them among the villagers. This is straining one's credulity. It is also significant that Dharam Das is also not a voter and not a single person to whom the parchis were allegedly given, was produced as a witness, although they are still alive and one of them, Mst. Gandharbu, is Dharam Das's own mother. I think the statement of Dharam Das must therefore be left out of consideration.

Dila Ram Patwari, who appeared as R. W. 12, has categorically denied that he had distributed parchis on behalf of Sri Hira Pal, or rendered any other help to him, during election. He has also denied that he made entries on any parchis like Exhibit P. 2. He has specifically denied having handed over such parchis to Shiv Ram or Nanak Chand. He denies any acquaintance with Sant Ram or Dharam

Das. He admits that he knows Brij Lal, but denied having asked him to distribute any parchis. Dila Ram was suspended on the forenoon the poll took place. Learned counsel for the respondent argued that in the departmental charge-sheet against Dila Ram, there was no allegation that he had rendered assistance to respondent No. 1. Devi Ram (R. W. 9) states that he distributed parchis for Sri Hira Singh in three villages. He offered a parchi to Sant Ram son of Kanshi Ram, (P. W. 12), but the latter refused to take it. Shakat Ram (R. W. 5) also states that Devi Ram distributed parchis on behalf of Sri Pal. In the course of his statement, the contesting respondent, Sri Hira Singh Pal categorically denies that he had ever asked Dila Ram to work for him in the election, or, that the latter rendered any such help. In my view, therefore, petitioner has not succeeded in proving that Dila Ram Patwari assisted Sri Hira Singh Pal during the election, or that the latter procured or obtained the Patwari's assistance.

Coming to the allegation that Gurdayal Patwari of Patta did propaganda for Sri Hira Singh Pal in the Patwar Halqu Patta for about three weeks before the date of polling, no evidence in support of this allegation has been led by the petitioner. As regards Nanak Lambardar of village Madhala, Pargana Barotewala, who is alleged to have done 'extensive' propaganda for Sri Hira Singh for about four weeks in Madhala and other villages, the sole evidence on this point consists in the statement of Nathu Ram (P. W. 27) to the effect that Nanak Lambardar came to his house and canvassed votes for Hira Singh whom he described as a good and useful man. Admittedly, Nathu Ram was Secretary, Congress Committee, Doon, upto 1950 and was polling agent for the petitioner in the bye-election. It is impossible to believe that Nanak Lambardar would go to Nathu Ram, of all persons and request him to vote for the respondent, who was opposing the Congress candidate.

There only remains the allegation that Devi Datt, Vaid, Kullahriwalla dispensary in pargana Doon, did propaganda in the dispensary and in the village, on behalf of Sri Hira Singh, for about two weeks before the poll. Here also the only evidence consists in the statement of Nathu Ram (P. W. 27), formerly, Secretary of the Congress Committee, Doon. According to this witness, he happened to go to the dispensary 15 or 20 days before the bye-election. The Vaid asked him to vote for Sri Pal. As already pointed out by me, while discussing the evidence relating to Nanak Lambardar, it was hardly likely that the Vaid would have asked a former Secretary of the Congress Committee and the polling agent of the petitioner in this very bye-election, to vote for a rival candidate. The Vaid, Devi Datt, who appeared as R. W. 8, has categorically denied

the allegation. I am unable, therefore, to believe the allegation against Devi Datt.

To sum up, therefore, I am of the view that the petitioner failed to prove that Sri Pal, respondent, had procured or obtained the assistance of Government servants serving under the Himachal Pradesh Government to support his election, or, in point of fact, they have done so.

It is not necessary to discuss the other points on which the election was assailed, because those issues were not pressed.

I may point out that the onus of proof lay heavily on the petitioner to prove his case. In my view, he has not succeeded in discharging that onus. The mere suspicion—however grave—that some irregularities might have been committed by the contesting respondent cannot obviously take the place of legal proof. In my judgment, therefore, the petition fails and is liable to be dismissed with costs, which I would assess at Rs. 100 payable to respondent No. 1, Sri Hira Singh Pal. Other parties will bear their respective costs.

T. RAMABHADRAN,  
Chairman,

Election Tribunal, Himachal Pradesh.

*Dated the 30th of September, 1954.*

I agree with the findings recorded by my

learned brethren and the reasons in support thereof. The admissible and substantive evidence placed on the record is not clear, consistent and cogent enough to justify any other findings.

BHAGAT SINGH,  
Member,

Election Tribunal, Himachal Pradesh.  
*Dated the 30th of September, 1954.*

#### ORDER OF THE TRIBUNAL

The election petition is dismissed with costs assessed at Rs. 100 payable to respondent No. 1. Other parties to bear their respective costs. The application under section 476, Cr. P. Code, put in by respondent No. 1 is also rejected, for reasons stated in this Tribunal's order of date.

Announced to parties Counsel.

T. RAMABHADRAN,  
Chairman.

BHAGAT SINGH,  
Member.

D. R. PREM,  
Member.

*Dated the 30th of September, 1954.*

अनुपूरक

(देखिये पृष्ठ 900-901)

## Daily rainfall recorded in Himachal Pradesh

District and Station	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th	14th	15th	16th	17th	18th	19th
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
<b>Mahasu</b>																			
Rampur	0.26	R	—	—	—	—	—	—	0.25	—	—	0.75	—	0.92	0.18	—	—	0.51	0.59
Chini	0.03	—	—	—	0.07	0.16	—	0.03	0.09	—	—	0.06	—	0.07	0.15	—	0.05	0.03	0.15
Rohru	—	0.28	—	—	—	0.50	—	0.06	1.53	0.58	—	0.16	0.43	0.03	1.27	0.20	0.27	0.33	0.41
Jubbal	0.39	0.21	0.19	R	R	0.05	R	0.18	1.47	1.41	—	—	—	—	—	—	0.29	0.55	0.65
Chopal	0.51	0.36	0.10	—	R	0.25	—	0.45	0.65	—	—	—	1.70	0.80	1.50	0.25	—	0.68	0.85
Theog	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Kumarsain	0.05	0.96	—	—	—	—	0.31	—	—	0.01	1.07	0.25	0.07	0.90	0.30	0.34	0.10	0.81	—
Junga	0.12	1.30	0.25	0.25	0.35	0.26	0.80	—	—	1.85	—	—	1.84	4.25	2.10	5.30	0.14	0.20	0.25
Kasumpti	0.35	3.75	—	1.13	0.09	0.55	0.44	—	0.30	3.30	R	0.65	2.50	2.87	0.45	3.05	0.05	1.30	1.15
Solan	0.25	1.95	0.05	0.35	0.08	—	0.55	—	0.30	0.27	—	—	—	5.80	2.80	2.60	0.35	0.15	—
Arki	—	1.20	—	0.87	—	—	0.34	—	1.00	0.75	—	—	0.50	3.75	1.70	3.80	—	0.60	—
Suni	1.74	—	—	—	—	—	—	0.42	0.46	—	—	1.31	1.36	1.32	0.81	—	0.52	0.55	2.06
Kotkhai	1.00	0.30	0.36	—	—	—	—	0.38	1.40	0.10	—	0.10	1.40	0.18	0.14	0.36	—	0.50	1.50
Bashla	—	1.45	0.10	—	—	0.30	—	0.65	2.15	1.60	—	0.10	—	—	2.35	0.30	—	0.50	1.35
Khadralla	0.27	0.87	0.11	—	—	0.25	0.15	0.30	1.00	0.30	—	—	0.60	0.50	2.00	0.25	—	1.10	1.04
Kilba	—	—	—	—	0.05	0.02	—	—	0.16	—	—	0.18	0.05	0.21	0.05	0.02	—	0.03	0.09
Sangla	—	—	—	—	0.09	0.30	—	0.13	0.12	—	0.10	0.37	0.11	0.14	0.30	0.07	—	0.05	0.56
Purbani	—	—	—	—	—	0.10	—	—	0.05	—	—	—	—	0.07	—	—	—	0.02	—
Phancha	1.83	0.35	1.32	2.63	4.12	1.63	0.60	3.20	0.55	0.26	0.22	1.82	2.80	5.08	1.26	0.24	1.76	2.62	1.86
Nichar	0.61	—	0.25	—	0.09	0.60	0.10	—	0.16	0.51	0.04	0.15	—	0.88	0.17	0.41	0.04	—	—
Shilaroo	2.30	1.85	0.78	0.90	—	—	—	—	—	1.15	—	—	0.22	3.90	0.73	0.25	0.50	0.40	2.31
Parala	0.80	1.03	0.91	—	0.64	0.07	1.38	—	—	—	—	—	0.21	1.22	0.91	0.53	—	—	0.52
<b>Mandi</b>																			
Sadar	3.52	0.70	—	0.10	0.75	0.45	0.24	0.40	—	—	0.24	0.80	1.40	1.27	0.83	—	1.90	3.00	4.90
Jogindar-Nagar	2.00	0.50	3.30	—	2.90	2.80	0.50	0.60	2.65	—	—	2.00	4.70	2.15	0.90	—	0.40	5.50	4.85
Sarkaghat	1.75	2.40	3.00	—	1.10	1.20	2.00	1.30	—	—	0.05	1.80	1.50	3.50	1.00	—	—	1.40	6.10
Chachiot	4.70	0.27	—	0.35	0.28	0.70	0.06	1.50	—	—	—	1.50	0.51	2.50	1.49	—	2.61	2.31	5.38
Sundernagar	2.07	0.97	—	0.30	0.68	0.88	0.56	1.34	—	—	—	2.36	2.95	1.71	2.38	—	1.25	1.05	3.82
Karsog	0.50	0.85	0.40	—	—	—	—	—	0.28	—	—	—	1.15	0.65	0.35	—	0.18	1.89	1.95
Bhangrotu-Farm	5.08	1.22	0.09	—	1.40	0.39	1.50	0.36	—	—	—	0.65	2.88	1.83	1.05	—	3.15	1.50	5.67
Jhungi	1.12	3.17	0.22	—	—	—	—	—	0.18	0.09	—	—	0.36	2.03	0.62	0.21	0.77	2.61	3.73
<b>Chamba</b>																			
Chamba	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Ludreva	—	—	—	—	—	—	0.30	—	0.50	—	0.20	—	0.10	0.40	0.50	—	—	—	—
Chatrari	—	—	—	—	—	0.15	—	0.45	—	—	2.00	—	—	0.08	—	—	—	—	—
Bhandal	—	0.28	—	0.30	0.34	0.22	—	—	—	—	—	0.10	—	0.40	0.55	—	0.10	—	—
Chawari	—	—	—	—	0.83	1.83	—	—	—	1.00	0.10	—	3.00	2.83	0.75	—	—	—	1.93
Batheri	0.60	0.90	—	0.40	0.50	—	1.20	0.30	—	0.40	0.60	0.30	1.10	—	0.20	—	0.50	0.90	0.30
Kalatop	0.18	1.18	—	—	—	0.16	0.54	—	0.66	—	—	0.25	0.59	2.36	2.77	—	—	—	0.06
Bharmaur	0.19	—	0.60	—	—	—	0.15	0.20	0.21	—	—	0.05	0.81	0.08	0.13	—	—	0.51	0.70
Tissa	—	—	—	0.10	—	—	0.33	0.44	0.05	—	—	0.19	0.22	0.93	0.37	—	—	3.23	—
Bhanota	—	0.12	—	—	1.00	—	—	—	—	—	—	—	0.22	0.45	0.98	—	—	—	—
<b>Sirmur</b>																			
Nahan	2.58	—	—	2.29	—	0.71	0.04	4.51	—	0.30	2.38	0.34	1.20	2.10	4.20	0.19	0.80	1.58	1.25
Paonta	3.17	0.15	0.06	1.35	6.57	0.10	0.85	R	1.65	—	3.47	1.05	1.52	4.41	6.20	0.27	—	0.52	1.45
Renka	0.70	0.28	0.76	0.16	0.14	2.94	2.80	8.44	2.35	—	0.77	0.71	5.04	1.96	4.55	0.16	—	0.19	1.47
Pachhad	—	0.98	—	0.46	0.0	—	0.12	—	0.05	1.40	0.30	—	1.00	1.80	—	3.30	—	2.00	—
Dhaura-Kuan	2.37	0.25	0.24	6.80	5.96	0.70	2.78	1.41	0.48	—	1.19	—	0.81	2.75	6.93	0.23	—	0.81	3.93
<b>Bilaspur</b>																			
Bilaspur	—	0.75	—	—	—	—	—	2.15	—	—	—	—	6.00	2.72	—	1.50	—	—	—

## for the month of August, 1954

20th	21st	22nd	23rd	24th	25th	26th	27th	28th	29th	30th	31st	Number of rainy days	Normal No. of rainy days	Total rain- fall for the month	Normal rain- fall for the month	Heaviest rain fall during the month	Total rain fall from 1-1-54 to 31-8-54	Normal rain- fall from 1-1-54 to 31-8-54	Remarks
21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
—	—	—	—	0.04	0.01	—	—	R	—	R	—	7	—	3.46	—	0.92	20.78	—	
—	—	—	—	—	0.07	—	—	—	—	—	—	3	—	0.94	—	0.16	21.33	—	
—	—	—	—	—	—	—	—	—	—	—	—	11	—	6.12	—	1.53	31.58	—	
—	0.26	0.39	0.31	—	—	0.27	—	—	—	—	—	10	—	5.55	—	1.47	36.68	—	
—	—	—	—	—	—	—	—	—	—	—	—	16	—	9.33	—	1.70	46.58	—	
0.75	0.07	—	—	0.51	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
0.44	0.25	—	0.12	0.50	1.30	1.00	—	—	—	—	—	11	—	6.50	—	1.07	35.43	—	
1.90	0.80	0.11	R	0.90	1.56	0.25	—	—	—	—	—	21	—	22.87	—	5.30	54.45	—	
—	0.15	0.10	0.35	—	—	—	—	—	—	—	—	20	—	27.45	—	3.75	57.97	—	
—	0.60	R	R	R	0.88	R	—	—	—	—	—	14	—	16.10	—	5.80	51.73	—	
0.71	—	—	0.56	—	—	0.17	—	—	—	—	—	11	—	15.99	—	3.80	46.52	—	
0.07	—	—	0.80	—	—	—	—	—	—	—	0.09	13	—	12.08	—	2.06	36.44	—	
—	—	—	—	—	—	—	—	—	—	—	—	14	—	8.59	—	1.50	36.81	—	
0.05	—	—	0.10	—	—	—	—	—	—	—	0.04	12	—	11.05	—	2.35	47.00	—	
—	—	—	—	0.06	—	—	—	—	—	—	—	15	—	8.93	—	2.00	49.34	—	
—	—	0.04	0.14	—	—	0.02	—	—	—	—	—	3	—	0.92	—	0.21	21.37	—	
—	—	—	—	0.03	—	—	—	—	—	—	—	10	—	2.54	—	0.56	23.95	—	
1.24	1.07	0.98	2.31	0.73	1.26	—	—	—	—	0.51	0.70	1	—	0.27	—	0.10	17.64	—	
0.10	—	—	—	—	—	0.05	0.04	—	—	—	0.08	27	—	42.95	—	5.08	85.53	—	
2.72	0.20	—	—	—	—	—	—	—	—	—	—	11	—	4.28	—	0.88	43.21	—	
2.94	0.44	—	—	0.96	—	—	—	—	—	—	—	14	—	18.21	—	3.90	48.10	—	
—	—	—	—	—	—	—	—	—	—	—	—	13	—	12.56	—	2.94	45.23	—	
3.85	0.17	0.04	3.10	1.00	0.25	—	—	—	—	—	0.70	22	—	29.61	—	4.90	71.36	—	
0.90	0.75	0.65	1.65	0.55	0.12	0.85	—	—	—	0.12	1.65	24	—	52.99	—	15.50	102.90	—	
0.30	0.20	0.80	—	1.80	0.35	—	—	—	—	—	0.70	20	—	32.25	—	6.10	76.25	—	
—	0.43	0.20	1.60	0.45	0.32	—	—	—	—	—	1.08	20	—	28.24	—	5.38	66.55	—	
0.28	—	—	0.28	0.47	—	—	—	—	—	—	0.32	18	—	23.67	—	3.82	60.64	—	
0.30	R	R	1.11	—	—	0.55	—	—	—	—	0.24	16	—	10.40	—	1.95	41.20	—	
1.37	0.32	0.21	1.22	1.21	0.13	1.02	—	—	—	—	0.65	22	—	32.90	—	5.67	62.75	—	
0.95	0.18	0.05	0.06	1.71	0.12	0.05	—	—	—	—	—	19	—	18.23	—	3.73	51.26	—	
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	23.16	—	
—	—	—	0.10	—	0.20	—	—	—	—	—	—	8	—	2.30	—	0.50	28.23	—	
—	—	—	—	—	—	—	—	—	—	—	—	4	—	3.51	—	2.00	46.73	—	
—	0.20	—	0.05	0.30	0.50	0.40	—	—	—	—	—	12	—	3.74	—	0.55	44.03	—	
—	—	—	—	—	1.25	0.02	—	—	—	—	—	10	—	15.27	—	3.00	57.30	—	
0.40	0.80	0.40	0.20	—	—	—	—	—	—	—	1.50	19	—	11.80	—	1.50	38.59	—	
0.74	0.40	0.05	—	—	—	1.30	0.40	—	—	—	—	13	—	11.64	—	2.77	40.57	—	
0.60	1.00	0.20	—	—	0.30	0.10	0.50	—	—	—	—	15	—	6.33	—	1.00	23.76	—	
—	—	—	—	—	0.06	0.10	1.41	—	—	—	—	10	—	7.43	—	3.23	40.47	—	
—	—	—	—	—	0.14	—	—	—	—	—	—	6	—	2.91	—	1.00	28.97	—	
0.40	—	0.05	0.10	—	—	0.16	—	—	—	0.40	R	18	—	25.58	—	4.51	50.29	—	
0.08	0.09	—	0.12	0.14	—	—	—	—	—	0.66	0.33	19	—	34.21	—	6.57	62.95	—	
0.18	R	0.08	0.46	0.25	—	0.25	—	—	—	0.22	1.16	23	—	36.02	—	8.44	69.15	—	
0.70	0.15	—	0.20	1.50	—	—	0.55	—	—	—	0.15	15	—	14.75	—	3.30	52.34	—	
—	—	—	—	0.42	—	—	—	0.12	—	—	—	18	—	38.18	—	6.93	68.60	—	
—	—	—	—	—	—	—	—	—	—	—	—	5	—	13.12	—	6.00	39.97	—	

R. day denotes fall so slight as not to admit of measurement.



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## ***Late Received***

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### **Part II**

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**Court of the Sessions Judge, Mahasu,  
Sirmur & Bilaspur Districts, Simla-1**

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#### **NOTIFICATION**

Simla-1 the 4th/6th December, 1954

**No. J. 3. Prs-47-4113/54.**—As the Bilaspur District has been included in the Sessions Division of Mahasu & Sirmur Districts with headquarters at Simla, I hereby authorise, under Section 17 (4) of the Criminal Procedure, Code, the District Magistrate, District Bilaspur, to dispose of urgent applications for bail, etc. during my absence from Bilaspur.

**TEJ SINGH VAIDYA,**  
Sessions Judge.